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# **TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1926**

**No. 273**

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**CHRYSLER SALES CORPORATION, APPELLANT,**

**vs.**

**WILBUR D. SPENCER, INSURANCE COMMISSIONER OF THE STATE OF MAINE**

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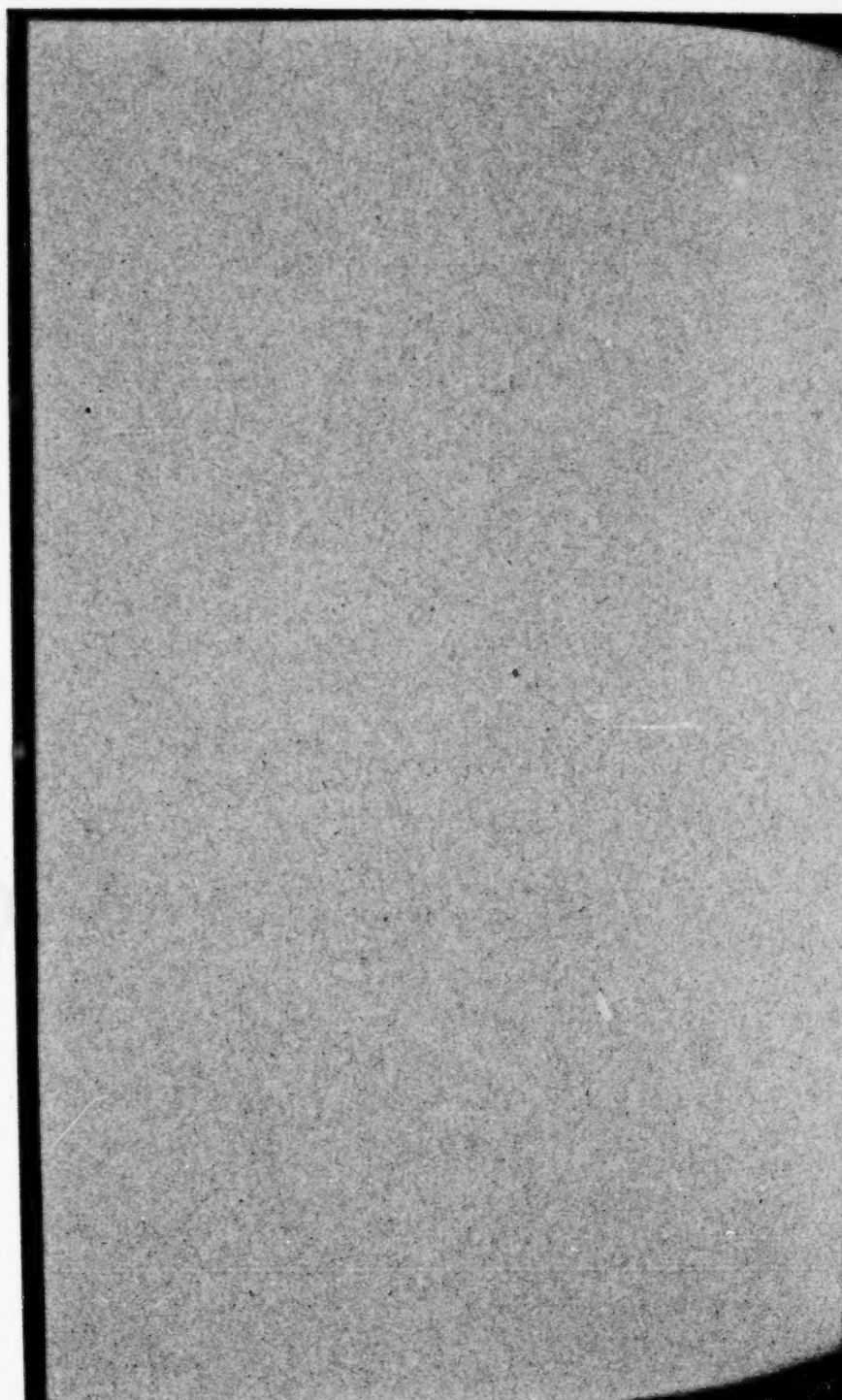
**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MAINE**

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**FILED JANUARY 31, 1926**

**(31,626)**





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SUPREME COURT OF THE UNITED STATES

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[fol. 1]

[Caption omitted]

[fol. 2]

**IN UNITED STATES DISTRICT COURT, DISTRICT  
OF MAINE, SOUTHERN DIVISION**

**CHRYSLER SALES CORPORATION, Plaintiff,**

**vs.**

**WILBUR D. SPENCER, as Insurance Commissioner of the  
State of Maine, Defendant**

**BILL OF COMPLAINT—Filed September 3, 1925**

To the Honorable the Judge of the District Court for the  
District of Maine:

The plaintiff above named for its bill of complaint herein  
respectfully shows to this Honorable Court:

(1) Plaintiff, Chrysler Sales Corporation, is a corporation duly organized and existing under and by virtue of the laws of the state of Michigan, and its principal office and place of business is located in the City of Highland Park, County of Wayne and State of Michigan; and said corporation is a citizen of said State of Michigan.

(2) Defendant, Wilbur D. Spencer is the duly appointed, qualified and acting Insurance Commissioner of the State of Maine, and is a citizen and resident of the State of Maine, and of the District of Maine, Southern Division.

(3) The grounds upon which the jurisdiction of this Court depends are that the plaintiff is a citizen of the State of Michigan, and the defendant is a citizen of the State of Maine; and that the action arises under the constitution and laws of the United States.

(4) The matter in controversy exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars (\$3,000).

[fol. 3] (5) Plaintiff is engaged in the business of buying from Chrysler Corporation, a corporation duly organized

and existing under and by virtue of the laws of the State of Delaware, and having its principal factories in the State of Michigan, and other factories in the states of Ohio and Indiana, all of the Automobiles and parts manufactured by Chrysler Corporation, and selling the same at wholesale to distributors and dealers in the United States, Canada, Mexico and other countries in all parts of the world. All automobiles sold by plaintiff to distributors and dealers in the United States, except automobiles sold to distributors having their place of business in Michigan, are sold in interstate commerce, and are shipped in interstate commerce from Detroit, Michigan, to distributors and dealers in states other than Michigan, including distributors and dealers in the State of Maine. Distributors in the State of Maine buy said automobiles in interstate commerce. When distributors in Maine resell said automobiles purchased from plaintiff to dealers or retail purchasers in Maine as hereinafter set out, such distributors sell an original article of interstate commerce. The automobiles manufactured by said Chrysler Corporation and so sold by plaintiff are known as Chrysler cars, enjoy a favorable reputation with the public and have been and are being purchased by the public in rapidly increasing numbers. At present more than three thousand (3,000) dealers in the United States are selling Chrysler cars. The selection of distributors and dealers and the establishing and maintaining a large sales organization is difficult and expensive. For this purpose plaintiff has expended large sums of money, and maintains a staff of more than two hundred persons. Success in the business of making and selling automobiles depends largely on the selection and retention of distributors and dealers who are the customers who buy cars from the plaintiff. In the State of Maine there are more than twenty-six (26) distributors and dealers who are buying Chrysler cars and selling them to the public. Plaintiff has acquired and built up a valuable business with said customers which is a very valuable property right and is dependent on the retention of said customers and on the retention of the good will of said customers and on giving satisfaction to the buying public. Sales of Chrysler cars to Maine customers by plaintiff during the first half of 1925 exceeded Two Hundred Thousand Dollars (\$200,000).

(6) More than eighty per cent (80%) of automobiles of all makes sold to the American public are sold under plans whereby the purchasers at retail pay only part of the purchase price at the time of taking delivery of the car and are given credit for the balance which is usually made payable in instalments. Ordinarily distributors and dealers have not sufficient capital to enable them to hold themselves the evidences of the unpaid balances due upon the automobiles thus sold on credit. It is the common practice for the distributors and dealers before selling cars on time to assure themselves of the services of a bank or finance company which agrees to purchase from them or to discount for them the notes, or other evidences of the balances due. The banks or finance companies rendering such services are obliged to maintain organizations to collect the payments when they are due and to watch that the cars are not improperly disposed of before they are paid for. They always require that insurance against the perils of fire and theft be effected in respect to the cars which they finance. In order to cover the expenses of collecting the instalments and of guarding against the making away with cars before full payment of the instalments the finance companies have made substantial charges. These charges together with the cost of insurance and the interest on the unpaid balance of the purchase price, have always been paid by the retail [fol. 5] purchasers of automobiles on time payment plan. The charges of finance companies have not been uniform and have been generally high. The placing of insurance has been largely controlled by finance companies and the insurance business has been rapidly getting away from local insurance agents. Frequently purchasers of cars of many makes have paid excessive finance charges. This has increased the ultimate price paid by the consumer. In many instances local dealers have become connected with finance companies and have shared in profits made by such companies. Plaintiff as an active competitor in the automobile field saw that it would be a great advantage to buyers of Chrysler cars if arrangements could be made by the plaintiff to secure a uniform and moderate financing charge on all Chrysler cars. In order to accomplish this purpose it was necessary to provide for uniform insurance protection on all Chrysler cars. Plaintiff found that it was



in a position to secure such insurance at moderate cost by an open contract or policy of insurance made and to be performed in Michigan, covering every Chrysler car against fire and theft for one year after date of purchase at retail for an amount not to exceed the factory list price. Such insurance could be obtained at low cost because of the unusually low loss ratio on Chrysler cars throughout the United States, and because of the unusually low acquisition cost to the insurance company of writing such a policy. By such a policy automatic protection for every retail buyer of a Chrysler car, and for any other parties having an interest therein or lien thereon could be provided. Uniform insurance being thus arranged, a moderate and uniform financing charge could be obtained available for all sales of Chrysler cars on the instalment plan. Thereby the value of the Chrysler product to the ultimate buyer would be increased and a real saving made. It is estimated that this saving to the retail buyers of Chrysler cars will amount to a sum between Three Millions and Five Millions of dollars annually.

[fol. 6] (7) Therefore on or about the 16th day of June, 1925, plaintiff and Palmetto Fire Insurance Company, an insurance corporation duly organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office in Sumter, in said state, and duly authorized and licensed to conduct and transact business of writing direct fire and theft insurance in the State of Michigan, and maintaining a duly licensed general agency in the State of Michigan, but not licensed to do business in the State of Maine, and not doing any business or maintaining any agency therein, duly executed in the State of Michigan a contract or policy of insurance made and to be performed in the state of Michigan, wherein and whereby said Palmetto Fire Insurance Company undertook to insure and did insure all Chrysler automobiles sold in the United States at retail during the term of the policy against fire and theft for one year from the date of such sale, said insurance being granted under and pursuant to the terms and conditions of said contract or policy of insurance. On or about the fourth day of August, 1925, said contract or policy was superseded and modified, and the superseding and modifying contract or policy was by agreement be-

tween plaintiff and said Palmetto Fire Insurance Company made retroactive to the effective date of the original contract or policy of June 16, 1925, and said superseding and modifying contract or policy of insurance dated August 4, 1925, has at all times since August 4, 1925, been in force and effect and is now in force and effect. A copy of said policy is attached hereto, marked Exhibit "A" and made a part of this bill.

(8) Said contract or policy is what is known as an open policy. Its term is for one year from July 1, 1925, covering against loss by fire or theft all Chrysler cars sold in the United States during the policy year for the full factory list price f. o. b. Detroit, for a term of one year from the date of sale to the retail purchaser. Under the terms of said contract or policy insurer is to issue a certificate in the [fol. 7] name of plaintiff for the account of whom it may concern whenever a car is reported sold at retail. Said policy expressly provides, however, that omission to report the sale of a car or to issue a certificate in respect thereof shall not prevent the retail buyer of the car and others interested from being protected under said policy. Only the plaintiff pays, or is liable to pay to said Palmetto Fire Insurance Company the agreed premium on said policy, and said premium is paid in the State of Michigan, and said policy is kept in the State of Michigan. Certificates are mailed by the Insurance Company from Michigan to the retail purchasers of said cars as a memorandum of the coverage afforded by said open policy, with counterparts to others known to have an interest in the respective cars.

(9) Plaintiff having entered into said contract or policy thereupon obtained and made available to retail purchasers of Chrysler cars a reduced uniform finance rate for time purchases, to wit, eight per cent of the unpaid balance and announced the same to the public. Plaintiff expended large sums in advertising said plan to the public. When retail sale of a Chrysler car is made, whether for cash or on time, the purchaser and other parties interested are protected by the said Michigan contract made between plaintiff and said Palmetto Fire Insurance Company. Whether said car is sold for cash or on time, the price is the same, except for said charge of eight per cent upon the unpaid balance,

if the car is sold on time. No purchaser may obtain his car at a less price whether or not he desires the protection of such insurance. The insurance comes into effect under the Michigan contract made by plaintiff with said Palmetto Fire Insurance Company, and the dealer or distributor can do nothing to prevent said insurance so coming into effect. For the protection of cash purchasers who desire other insurance than that provided by said contract or policy, the policy provides that if such purchaser takes other insurance, this insurance shall be merely excess insurance.

[fol. 8] (10) The distributors of and dealers in Chrysler cars are in no way agents of the plaintiff. The course of the business is as follows: Plaintiff having from time to time fixed the list price of its cars, sells them to its distributors for a cash price computed as follows: list price less a given discount, plus war tax and certain delivery charges. Freight is paid by the distributor. From time to time as occasion may have required changes have been made in amount of list price, discount, or delivery charges which have also been known as handling charges or unloading charges. In computing the discount there is not included either the war tax, freight or the delivery charge. On July 1, 1925 additions were made to the delivery charge on all models of Chrysler cars. The distributor sells to the dealer, on the same basis as the distributor has bought, but less a smaller discount on list price. The dealer in turn sells to the retail purchaser at a price equal to the list price plus freight, war tax, and delivery charge. The retail dealer reports to plaintiff the name of the purchaser, date of sale, motor number, style, etc., on retail sales made. Plaintiff notifies the agent in Detroit, Michigan, of said insurance company who mails the certificate hereinbefore referred to from his office in Detroit to the purchaser and counterparts to others who to his knowledge may have an interest in the car.

(11) No dealer or distributor takes any part in writing or replacing, or in the payment for the insurance under said Michigan contract. He neither solicits nor receives nor transmits any application for insurance. No arrangement that he can make with the retail purchaser can change the protection afforded by the policy or prevent it from taking

effect. There is no application which the insurer can accept or reject. Neither does the distributor or dealer solicit, demand, receive or transmit any premium. He must pay for each car on receipt of same the full price as above set out. He can get back no part of said purchase price [fol. 9] which he has paid for the car. What he receives from the retail purchaser upon the sale of a car is his to do with as he pleases. It is the proceeds of his own property for which he has already paid. No part of it is he bound to transmit to anybody as a premium for insurance or in any other guise. No dealer or distributor acts in any manner in behalf of or as agent of said Palmetto Fire Insurance Company. Neither the distributor nor the dealer receives any commission or other compensation in any form or on or by virtue of the insurance protection afforded to the retail purchaser by said Michigan contract.

(12) Chrysler cars are now being sold in large numbers in Maine and the retail purchasers thereof and other parties interested in said cars wherever said purchasers or parties may reside and wherever in the United States, Canada or Mexico said cars may be taken or kept, are protected by said insurance policy. Defendant claiming to act as Insurance Commissioner of the State of Maine has ruled and announced to the public that the sale of Chrysler cars, pursuant to the plan hereinbefore described, wherein and whereby the purchaser becomes protected by the Michigan insurance contract as above stated is contrary to the laws of the State of Maine, and that plaintiff and every Chrysler distributor or dealer selling Chrysler cars in Maine is violating the criminal and civil law of said state, including among others the following statutes: Sections 121 and 122 of Chapter 53 of the Revised Statutes of Maine as amended by Chapter 25 of the Public Laws of 1917, and Section 129 of Chapter 53 of the Revised Statutes of Maine, and other statutes not specified by defendant. Defendant has threatened and now is threatening to immediately procure the arrest and conviction of every Chrysler distributor or dealer selling in Maine any Chrysler car the purchaser of which is or may be protected under said insurance contract made in Michigan between plaintiff and Palmetto Fire Insurance Company. Defendant has sent out [fol. 10] and is giving out and publishing letters and com-

munications stating that plaintiff, said dealers and distributors and said Palmetto Fire Insurance Company are violating the law of Maine by virtue of sales of cars as hereinbefore alleged. Many distributors and dealers have been and are being approached by defendant and threatened with legal proceedings criminal and civil if they do not stop selling cars where the purchaser is protected by insurance as above indicated. By and as the result of said threats and communications published by defendant, dealers, distributors and prospective retail buyers of Chrysler cars in Maine are being harassed and intimidated and brought into a state of uncertainty seriously injurious to plaintiff's business with persons in Maine and in the sale of its produce in said state. Unless relief by temporary restraining order is immediately granted to plaintiff against said threats and threatened acts of defendant, plaintiff's business with parties in Maine will be destroyed or irreparably damaged and immediate and irreparable loss and damage will result to plaintiff before the matter can be heard on notice. Unless plaintiff is further granted temporary injunction against said threats and acts and threatened acts pending this action and until final decree herein, plaintiff will suffer immediate and irreparable property loss and damage before the merits of this action can be determined. The injuries done by said acts and threats of defendant are not and will not be compensable by damage. The action threatened by defendant will result in multiplicity of prosecutions which will irreparably damage and injure the sale of Chrysler cars in Maine, and injure the good will of plaintiff and the value of plaintiff's business with persons in Maine, and for such damage and injury damages cannot be ascertained. Plaintiff has no adequate remedy at law.

(13) All said acts and threats of defendant are unlawful, and as plaintiff is informed and believes, without sanction or support in the laws of the State of Maine under which he assumes to act. Neither the plaintiff nor any dealer or [fol. 11] distributor of Chrysler cars in Maine is violating or threatens to violate any law of the State of Maine all of which appears from the facts hereinbefore set forth, and the laws of the State of Maine of which this court will take judicial notice. The Statutes of Maine relied on by



defendant, properly construed have no application to the acts of plaintiff and of distributors off and dealers in Chrysler cars in Maine as hereinbefore set forth.

(14) If and to the extent that the laws of the State of Maine purport or may be construed to prohibit distributors of and dealers in Chrysler cars in Maine from making sales in the manner hereinbefore set forth in Maine of automobiles the retail purchasers of which shall be protected by said contract made in Michigan, or purport or may be construed to subject said dealers and distributors to criminal prosecution and punishment or to forfeiture by reason of sales so made by them, or purport or may be construed to invalidate or otherwise apply to said insurance contract made by plaintiff in Michigan with Palmetto Fire Insurance Company, then to that extent said state statutes are void as violating and as contrary to the constitution of the United States and amendments thereto and particularly the Fourteenth Amendment thereof by reason of attempting unlawfully to regulate and burden interstate commerce, of depriving the plaintiff and customers of plaintiff, (i. e., distributors and dealers in Maine) of property without due process of law, impairing the freedom of contract guaranteed by the Federal Constitution and denying to the plaintiff and said distributors of and dealers in Chrysler cars the equal protection of the laws, and as attempting to regulate, prohibit and burden the making and performance of a contract lawfully made and to be performed outside the limits of the State of Maine, and thereby denying full faith and credit to the laws of Michigan governing said policy and under which the same is valid. For the same reason, the acts and rulings of defendant as Insurance Commissioner of the State of Maine as hereinbefore alleged are likewise a violation of the Constitution of the United States.

[fol. 12] (15) For as much therefore as plaintiff is without remedy in the premises except in a court of equity and to the end that plaintiff may obtain from this Honorable Court the relief to which plaintiff is by right and equity entitled, plaintiff respectfully prays that the above named defendant be directed to full, true and perfect answer make to this bill of complaint, but not under oath, answer under oath being hereby expressly

waived and that defendant, and his successors in office, and his deputies, agents and employes and all persons acting for him be permanently restrained and enjoined from bringing or causing to be brought or threatening to bring or to cause to be brought any prosecutions or any actions or proceedings for the recovery of penalties or forfeitures or any civil actions or proceedings against the plaintiff or against any distributors of or dealers in Chrysler cars in Maine based on or purporting to be based on or by reason of said contract of insurance between plaintiff and Palmetto Fire Insurance Company or based on or purporting to be based on or by reason of any rights existing or arising in favor of residents of Maine or in respect to property situated in Maine by reason of the existence of said contract of insurance or the performance thereof or the sale of Chrysler cars in Maine, or based on or purporting to be based on or by reason of any of the acts done or to be done or business transacted or to be transacted by plaintiff or by any distributor of or dealer in Chrysler cars in Maine in the course of its or their business as more particularly described in this bill of complaint and from interfering in any other manner with its or their said business as aforesaid, and restrained and enjoined from issuing, declaring or publishing any statement, official or otherwise, that plaintiff or any of said distributors or dealers is violating any law of the State of Maine by virtue of any of the acts or transactions set forth herein. Plaintiff further prays that pending the final hearing and determination of this action a temporary injunction be granted restraining defendant and his successors in office, his deputies, employes and all persons acting under him as hereinbefore prayed and that on final hearing said injunction be made perpetual. Plaintiff further prays for such other and further relief as may be equitable and proper in the premises.

Wherefore plaintiff prays that a writ of subpoena issue herein, directed to the above named defendant, Wilbur D. Spencer, Insurance Commissioner of the State of Maine, commanding him on a day certain to appear and answer to this bill of complaint.

Chrysler Sales Corporation. Andrews, Nelson & Gardiner, Solicitors for Plaintiff. Larkin, Rathbone & Perry, of Counsel.

[fol. 14] *Duly sworn to by F. A. Morrison. Jurat omitted in printing.*

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[fol. 15] EXHIBIT "A" TO BILL OF COMPLAINT

Non-valued Fire, Theft, & Transportation Form

No. A-9657. Automobile Policy

Palmetto Fire Insurance Company, Sumter, South  
Carolina,

In consideration of the warranties and the premium hereinafter mentioned, does issue the assured named therein, and legal representatives, for the term herein specified, to an amount not exceeding the amount of insurance herein specified, against direct loss or damage, from the perils insured against, to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) of the automobiles described herein while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and Canada and Mexico, including while in building, on road, on railroad car or other conveyance ferry or inland steamer, or coastwise steamer between ports within said limits,

Amount: \$ As specified. Premium: As agreed.

Name and address of assured: Chrysler Sales Corporation, Detroit, Michigan.

and/or for account of whom it may concern as hereinafter specified. The term of this policy begins at noon on the 1st day of July, 1925, and ends at noon on the 1st day of July, 1926, standard time. (All certificates issued hereunder, however, remaining in full force and effect for the term specified in such certificates.)

Amount of Insurance: As specified. — dollars (\$—).

#### Warranties

The following are statements of facts known to and warranted by the Assured to be true, and this policy is issued by the Company relying upon the truth thereof:

1. Assured's occupation or business is: This information not required by insurer.

2. The following is the description of the automobiles: Information not required except as hereinafter specified.

3. The facts with respect to the purchase of the automobile described are as follows: This information not required by insurer except as hereinafter specified.

4. The uses to which the automobile described are and will be put, are: This information not required by insurer.

5. The automobile described is usually kept in garage, located: This information not required by insurer.

### Non-vitiation Clause

Anything hereinafter contained to the contrary notwithstanding, the insurance provided for herein shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which any automobile covered by such insurance shall be used (except the unlawful transportation of liquor) nor by the nature of the occupation or business of any of the Assured, nor by the location where any such automobile is kept.

### [fol. 16] Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of

the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

### Exclusions

**Property Excluded.**—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies;

#### War, Riot, etc.:

(b) Loss or damage caused directly or indirectly by invasions, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto:

### Title and Ownership

(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership; or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

**Encumbrance.**—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder—

(a) While encumbered by any lien or mortgage.

### Conditions

**Limitation of Liability and Method of Determining Same.**—This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss



of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

**Abandonment.**—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

**Loss for Which Bailee for Hire is Liable.**—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 17] way of loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

**Noon.**—The word "Noon" herein means noon of standard time at the place the contract was made.

**Misrepresentation and Fraud.**—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

**Protection of Salvage.**—In the event of loss or damage occasioned by a peril insured against herein the Assured

shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

**Notice and Proof of Loss.**—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the county and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating

separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company, and if appraisal is de-[fol. 18] manded, then not until sixty days after an award has been made by the appraisers.

**Subrogation.**—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

**Suit Against Company.**—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall fully comply with all the foregoing requirements, nor unless commenced within twelve (12) months next after the happening of the loss; providing that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions, and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached

hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

In witness whereof this Company has executed and attested these presents but this policy shall not be valid unless countersigned by a duly authorized agent of the Company.

P. Moses, President. Davis D. Moise, Vice-President.

Countersigned at Detroit, Michigan, this 4th day of August 1925.

Edwin J. Carter, Agent.

[fol. 19]

### EXHIBIT "A"

Rider Attached to and Forming Part of Policy No. A-9657 of the Palmetto Fire Insurance Company, Herein Called "Insurer"

This rider shall supersede and take the place of anything to the contrary in the conditions and provisions of the policy to which it is attached.

## I

### Definitions

The following words whether singular or plural, unless the context otherwise requires, shall be given the following meanings:

Chrysler shall mean Chrysler Sales Corporation, a Michigan Corporation of Highland Park, Michigan, its successors and assigns.

Finance companies shall mean banks, trust companies, finance or credit companies, corporations, partnerships, trusts, dealers, individuals and other organizations who may finance the retail sale or lease of Chrysler cars.

Chrysler cars shall mean new and unused commercial passenger automobiles sold or distributed by Chrysler and which have been or may hereafter be manufactured by Chrysler Motor Corporation, a Delaware corporation, of Detroit, Michigan, its successors or assigns.

To finance shall mean to purchase or loan upon, or to cause to be purchased or loaned upon, to discount or otherwise acquire the notes and/or security instruments made and given to dealers by purchasers in connection with the purchase or lease of Chrysler cars at retail.

[fol. 20] Dealer shall mean persons, firms or corporations selling or leasing, or agreeing to sell or lease Chrysler cars at retail.

Purchaser shall mean persons, firms or corporations purchasing or agreeing to purchase Chrysler cars at retail for cash or on deferred payments, or to lease Chrysler cars at retail on the deferred payment plan.

Notes shall mean promissory notes or other obligations made and given by purchasers to dealers as evidence of the deferred payments owing on the retail purchase or lease price of Chrysler cars when they are sold or leased by dealers to purchasers upon a deferred payment plan.

Term of this policy shall mean the period during which insurance hereunder may become effective, to wit: from July 1st, 1925, to June 30th, 1926, both dates inclusive.

Security instruments shall mean conditional sale contracts, chattel mortgages, leases, bailments, contracts, and/or other instruments reserving or creating title, liens, security or other property interest in Chrysler cars sold at retail to purchasers on a deferred payment plan.

Policy shall mean this contract of insurance.

Certificate shall mean memorandum of insurance under this policy issued or to be issued as herein provided.

Insurance shall mean insurance against the perils insured against in the policy and/or certificate.

## II

### Assured and Coverage

The Insurer does hereby insure Chrysler finance companies, dealers and purchasers as their interests may appear against loss or damage caused by or arising out of any of the hazards mentioned in the printed part of this policy, to Chrysler cars, provided, however, that the lawful seizure and/or confiscation of any Chrysler car for violation of any liquor or prohibition statute by or with the knowledge or consent of the purchaser, shall terminate the



liability thereunder of Insurer as to the purchase or leases of such car, but shall not affect the liability hereunder of Insurer as to other parties.

All banks, trust companies, persons, firms or corporations with or to whom finance companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments shall be protected by this insurance.

Coverage hereunder and under certificates issued hereunder shall be for one hundred per cent (100%) of the list price, F. O. B. Detroit of each Chrysler car insured hereunder, on the date of purchase or lease of said — by the purchaser, including standard equipment, and any extra equipment and accessories costing in the aggregate not to exceed One hundred dollars (\$100). The limit of liability of the Insurer for loss or damage to a Chrysler car with standard equipment insured hereunder, shall be the total cash value of such car and standard equipment at the time of such loss or damage. The limit of liability of Insurer for loss or damage to extra equipment and accessories insured hereunder, shall be seventy-five per cent (75%) of the actual cash value of such extra equipment and accessories at the time of such loss or damage, in no event to exceed the sum of seventy-five dollars (\$75.00).

Coverage hereunder and under certificates is automatically effective from the date on which (during the term of this policy) each purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, whichever shall be the earlier, and shall extend in respect to such Chrysler [fol. 22] car for a period of twelve (12) months; provided, that in every case where notes and/or security instruments shall have been given in connection with the purchase of any Chrysler car, coverage on such car shall be effective from the date of such notes and/or security instruments.

It is specially agreed that every Chrysler car sold at retail during the term of this policy, shall be automatically covered hereunder, notwithstanding any failure or omission to issue a certificate or any failure or omission to act, it being the intent of this policy that only parties responsible for acts or omissions to act shall suffer thereby.

Anything to the contrary herein notwithstanding, it is expressly agreed that no Chrysler car shall be covered hereby which does not, when the purchaser takes delivery of the same or receives a bill of sale thereof, carry a Class A rat-

ing for fire insurance by the National Board of Fire Underwriters or which is not continuously equipped with a locking device approved by the Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

Coverage hereunder on any Chrysler car shall not be vitiated or affected because such Chrysler car is operated across the border of the United States and into the territory of the Government of Mexico.

### III

#### Certificates

Insurer shall issue certificates to purchasers in the form attached hereto, which certificates and insurance evidenced [fol. 23] thereby, shall not be subject to cancellation by either party. If sales of Chrysler cars are financed there shall be issued at the request of finance companies financing same, duplicates of certificates.

### IV

#### Transfers

If any original purchaser shall transfer his interest in a Chrysler car, insured hereunder, and shall mail a notice of such transfer together with his certificate, and \$1.50 to the Insurer at its office No. —, Detroit, Michigan, (said charge being to defray the cost of issuing a new certificate), insurance hereunder shall inure to the benefit of the transferee for the unexpired term originally insured, and Insurer will issue a new certificate for such unexpired term to such transferee; provided, however, that if the sale of the car so transferred has been financed, the consent in writing of any finance company financing the same shall first be obtained to such transfer.

### V

#### Excess Insurance

In all cases where Insurer disclaims liability to a purchaser on account of other insurance, coverage hereunder shall be considered as excess insurance, and shall not apply

to any loss or damage until amount recoverable from such other insurance shall have been exhausted; if full recovery has not been made within 90 days of a claim for loss from such other insurance of all amounts owing on any note for a Chrysler car, insurer shall advance the amount of its liability hereunder to the insured authorized to receive payment of the loss or damage as a loan without interest, the repayment of which shall be conditioned upon and be required to be made only to the extent of any recovery from such other insurance.

In all cases where Insurer disclaims liability to a purchaser, Insurer may pay the amount of its liability hereunder to the party authorized to receive the same, other than purchaser, as a loan without interest, instead of as payment of a loss, the repayment of which loan to the Insurer shall be conditioned upon and be required to be made only to the extent of any recovery from the purchaser by the party to whom such loan has been made by the Insurer. If any action is brought against purchaser at the request of Insurer, Insurer shall pay all attorney fees, expenses and costs in such action.

## VI

### Disclaimer of Liability by Insurer

If any claim or legal action be made or commenced against Chrysler, or any finance company, by purchaser, arising out of the refusal of insurer to pay any loss under this policy, or a certificate issued hereunder, Insurer shall defend against such claim or action and pay all attorney fees, costs and expenses incurred and/or judgments recovered in any such claim or action.

## VII

### Reports

Commencing with the 15th day of August, 1925, and on the 15th day of Each calendar month thereafter until and including July, 1926, Chrysler shall send a monthly report to the Insurer at Detroit, Michigan, of all cars insurance with respect to which is hereunder contemplated and provided for. Such reports shall show separately the

number of all Chrysler four-cylinder cars open and closed, Chrysler six-cylinder cars open and closed, commercial chassis and commercial cars with bodies with serial and motor numbers respectively thereof. The report of August 15, 1925, shall show the cars in possession of or in transit to distributors and/or dealers in the United States on July 1, 1925, and cars thereafter shipped during the month ending July 31, 1925. Subsequent reports shall show shipments to distributors and/or dealers in the United States during the calendar month preceding the month in which the report is sent.

Chrysler further agrees to submit such other information as insurer may from time to time reasonably require regarding Chrysler cars that are or may be covered by insurance hereunder and to permit Insurer from time to time to check its records against Chrysler records in regard to such Chrysler cars.

### VIII

#### Premiums

Agreed premiums are to be paid by Chrysler to Insurer through Alexander & Alexander, Inc., General Agents, at —, Detroit, Michigan, for insurance hereunder on or before the 15th day of each month beginning August 15, 1925, and ending July 15, 1926, for all Chrysler cars reported by its distributors and dealers as sold and/or leased during the preceding calendar month and insured hereunder.

Such reports shall be accompanied by an itemized statement.

### IX

#### Payment of Losses

Payment of all losses claimed hereunder shall be made to purchaser unless the purchase of a car with respect to which claim is made, has been financed in which case payment of the loss shall be made to any finance company, dis-[fol. 26] tributor or dealer financing the same, for account of all parties as their respective interest may appear.

## X

## Examination

All parties insured hereunder shall submit to examination under oath by any person named by Insurer as often as shall be required and shall subscribe to same and shall produce for examination all books of account, bills, notes, or other records, or certified copies thereof if the originals cannot be found, in respect to any matters pertaining to coverage of any Chrysler car hereunder at such reasonable place as may be designated by Insurer or its representatives and to permit extracts and copies thereof to be made.

## XI

## Replacements

If Insurer should so elect Chrysler will sell to Insurer new Chrysler cars at the wholesale list price F. O. B. Detroit on date of loss to replace any similar Chrysler car as to which there has been filed with the Insurer a claim for total loss under this policy and/or certificate issued hereunder.

## XII

## Recording

The recording or filing of security instruments shall not be required by Insurer but shall be optional with the finance company interested and/or holders, and/or owners of such security instruments.

## XIII

## Cancellation

This policy and certificates are not subject to cancellation [fol. 27] tions by Insurer or by any of the insured; this policy shall terminate June 30, 1926, unless previously renewed by mutual agreement; provided, however, that coverage under certificates issued hereunder at any time during the term of this policy shall be and remain in full force as to all parties concerned until the expiration dates named in such certificates.

## XIV

## Qualified Company

Insurer warrants that it is qualified to do business in the State of Michigan, and that this policy is so executed and all certificates thereunder shall be so issued as to comply with and conform to all laws State or Federal at any time applicable, and agrees to do all things which may be necessary to do, in order to comply with said laws and to carry out the terms, provisions and purposes of this policy and of certificates issued hereunder, it being expressly understood that it is one of the purposes of this policy that Insurer shall issue certificates of insurance hereunder with respect to every Chrysler car sold at retail throughout the United States during the term of this policy.

## XV

## Michigan Law and Acceptance

This policy and the certificates issued hereunder are to be construed in accordance with and governed by the laws of the state of Michigan, and acceptance of this policy by Chrysler at Detroit, Michigan, shall put the same in full force and effect with respect to all parties covered hereunder or under any certificate issued hereunder.

Palmetto Fire Insurance Co., by Edwin J. Carter,  
Agent.

Approved and accepted by P. Moses, President Palmetto Fire Insurance Co.

[fol.28] It is understood and agreed that Policy No. A9657 executed the 4th day of August, 1925, by the Palmetto Insurance Company shall take the place of and be substituted for Policy No. A-9652, executed on or about the 16th day of June 1925, which is hereby abrogated.

Certificate issued under said Policy A-9652 shall be considered as issued under this policy and be governed by the terms hereof.

Executed at Detroit, Michigan, this 4th day of August, 1925.

Chrysler Sales Corporation, by (S.) H. A. Davies,  
Asst. Treas. Palmetto Fire Insurance Company,  
by (S.) Edwin J. Carter, Agent.

The above contract is consented to by us.

Commercial Credit Company, by A. E. Duncan.

[fol. 29]

## Form of Certificate

No. —

### Purchaser's Original Copy

#### Non-valued Fire, Theft, & Transportation Automobile Form

This is to certify that under policy No. A 9657 of the Palmetto Fire Insurance Company of Sumter, South Carolina, issued to Chrysler Sales Corporation, covering for account of whom it may concern, the new Chrysler Passenger or Commercial car, sold or leased and delivered to (Name of purchaser:) —, (Address:) No. —, (Street:) —, (City:) —, (State:) —, and described as follows: Year: —; Model, —; type of body (if truck, state tonnage): —; factory or serial No. —; motor No.: —, is insured against direct loss or damage from the perils insured against to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and/or while in Canada and/or in Mexico, including while in building, on road, on railroad car or other conveyance, ferry or inland steamer, or coastwise steamer between ports within said limits, for the period beginning at noon — and ending at noon —, standard time, for a sum not exceeding — dollars (\$—), being list price including all standard factory equipment F. O. B. Detroit, Michigan, subject to all the conditions, stipulations, provisions, exclusions and warranties set forth in said policy or which appear hereon.

The interest of the Chrysler Sales Corporation, and/or of purchasers, owners, dealers, finance companies, banks, trust companies, persons, firms or corporations or others having an insurable interest in said automobile are protected under this insurance with the same force and effect as if they severally accepted same, and the existence of all such interests is permitted.

Loss, if any, to be adjusted with purchaser, though to be paid subject to all conditions of this certificate only to (Name:) — —, (Address:) — —, for account of all interests.

This insurance does not in any event cover loss or damage by confiscation of said car while used in violation of any liquor or prohibition statute.

The insurance hereunder shall be considered as excess insurance in the event of any other insurance covering the hazards hereunder insured and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted.

It is a consideration of this insurance that the within described automobile shall be continuously equipped with locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

This insurance is not subject to cancellation.

Anything herein contained to the contrary notwithstanding this insurance shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which the automobile is used (except the unlawful transportation of liquor) nor by the nature of the assured's occupation or business, nor by the location where the automobile is kept.

This insurance may be transferred by the original holder of this certificate, mailing notice of such transfer together with this certificate and \$1.50 to insurer, said insurance continuing for the unexpired term originally insured, protecting the transferee's interest, providing consent in writing of any company financing the same shall first have been obtained to such transfer.

This certificate shall not be valid until countersigned by duly authorized agent at Detroit, Michigan.

Countersigned at Detroit, Mich., (Date:) — —,  
— by (Agent:) — —.



## Provisions Required to be Stated by Law

[fol. 30]

### Form of Certificate

The policy under which this certificate is issued is subject to the following conditions:

#### Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever, and lightning.

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

### Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies;

#### War, Riot, etc.:

(b) Loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto.

### Title and Ownership

(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership,

or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

### Conditions

Limitation of Liability and Method of Determining Same.—This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly with proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which a bailee may be liable and which would otherwise be covered

[fol. 31] hereunder, this Company will advance to the Assured by way of loan of money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances

thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the County and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss of damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by parties equally.

**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required [fols. 32 & 32a] have been received by this Company, and if appraisal is demanded, then not until sixty days after an award has been made by the appraisers.

**Subrogation.**—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commenced within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the law of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

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[fol. 33] Summons and marshal's return omitted in printing.

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[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR HEARING AND MOTION FOR TEMPORARY  
RESTRAINING ORDER—Filed September 3, 1925

To the Honorable the Judge of the District Court for the  
District of Maine:

Now comes plaintiff above named and makes this, its application for a hearing in this cause for an interlocutory injunction in accordance with Section 266 of the Judicial Code of the United States, as amended by the Act of Congress

approved March 14, 1913; and plaintiff further files this, its motion for the issue of a temporary restraining order to remain in force until the application for said interlocutory injunction can be heard and determined, for the reasons and on the grounds set forth in its Bill of Complaint, and to prevent irreparable loss and damage to plaintiff.

Andrews, Nelson & Gardiner, Solicitors for Plaintiff.  
Larkin, Rathbone & Perry, of Counsel.

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[fol. 35]      IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE—Filed September 8, 1925

Plaintiff having applied for a temporary injunction restraining defendant as prayed in the duly verified bill of complaint and it appearing that such injunction, if granted, may suspend or restrain the enforcement of a state law by restraining the action of a state officer, on the ground of the unconstitutionality of said statutes, if such statutes should be construed as claimed by defendant, and if said statutes prohibit the acts and practices of plaintiff and customers of plaintiff as set out in said complaint, and it appearing from specific facts alleged in said verified bill that immediate and irreparable loss and damage will result to applicant, the plaintiff herein, before the matter can be heard on notice, and it appearing from said complaint that plaintiff is prima facie entitled to interlocutory injunction as prayed, and it further appearing that the defendant is issuing declarations and statements to the effect that plaintiff and plaintiff's customers are violating the criminal and civil laws of Maine and are subjecting themselves to heavy fines, forfeitures and penalties; and that said defendant is threatening to immediately cause the arrest and prosecution of distributors and dealers selling plaintiff's products in Maine and that said declarations, statements and threats have already had serious effect on, and are causing irreparable injury to plaintiff's property and business, and [fol. 36] that such arrests and prosecution would cause irreparable injury to plaintiff and plaintiff's property be-

fore any hearing or notice can be had in this matter by causing great loss of customers, dealers and good will and disruption of sales organization.

Now, therefore, on motion of plaintiff, it is ordered, that defendant appear on Sept. 15th, 1925, at 11 o'clock A. M., or as soon thereafter as counsel can be heard, or at such other times as may hereafter be duly set as the time for the hearing of said application, at the court room of the above named court, in Portland, Maine, and there show cause why the interlocutory injunction in said bill of complaint prayed for should not issue, and I hereby call to my assistance to hear and determine the application, two other judges, to-wit: Hon. Chas. F. Johnson, Circuit Judge, and Hon. Clarence Hale, District Judge.

Further ordered, that a copy of the Bill of Complaint be served on defendant at the time of the service of this order.

Further ordered, that at least five days' notice of said hearing on application for temporary injunction be given to the Governor and to the Attorney General of the State of Maine and to the defendant in this action.

John A. Peters, Judge U. S. District Court.

3 Sept. 1925.

[fol. 37] UNITED STATES OF AMERICA,  
District of Maine,  
Southern Division, ss:

CHRYSLER SALES CORPORATION, Plaintiff,

vs.

WILBUR D. SPENCER, Insurance Commissioner of the State  
of Maine, Defendant

September 4, 1925.

I have this day made service of the within Order of Court, upon Wilbur D. Spencer, Insurance Commissioner of the State of Maine, Defendant in the above entitled cause, by delivering to him in hand, at Augusta in said District, a true and attested copy hereof. And, at the same time, I delivered to him in hand a copy of the Bill of Complaint, as within directed.

And, on the same day, I made service of the within Order of Court upon Ralph O. Brewster, Governor of the State of Maine, by delivering to him in hand, at Augusta in said District, a true and attested copy hereof.

And, on the same day, I made service upon Raymond Fellows, Attorney General of the State of Maine, by delivering in hand to Sanford L. Fogg, Deputy Attorney General of the State of Maine, at Augusta in said District, a true and attested copy hereof.

Burton Smith, Deputy U. S. Marshal, District of Maine.

Fees:

Services, 4 .....	\$8 00
Copies, 3 at 50¢ .....	1 50
	<hr/>
	\$9 50

Sept. 4, 1925.

On behalf of the Attorney General of the State of Maine I hereby acknowledge receipt of an attested copy of an order of the U. S. District Court for the District of Maine, Southern Division, to appear for hearing Sept. 15, 1925, at Portland at 11 A. M. in the case of Chrysler Sales Corporation vs. Wilbur D. Spencer, as Insurance Commissioner of the State of Maine.

Sanford L. Fogg, Deputy Attorney General of the State of Maine.

[fol. 38]      IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING APPLICATION FOR INTERLOCUTORY INJUNCTION—January 4, 1926

This day this cause came on to be heard before the Honorable Charles F. Johnson, Circuit Judge, the Honorable Clarence Hale, District Judge, and the Honorable John A. Peters, District Judge, sitting as a statutory court as required by the provisions of Section 266 of the Federal



Judicial Code, on the application of the plaintiff for an interlocutory injunction and upon verified bill of complaint and the arguments of counsel, and was submitted to the court.

And the court being fully advised in the premises, find that the complainant is not entitled to the interlocutory injunction prayed for in its bill of complaint.

It is, therefore, ordered and decreed that the application of the plaintiff for an interlocutory injunction herein be and the same is hereby refused and denied.

Charles F. Johnson, U. S. Circuit Judge. John A. Peters, U. S. District Judge. Clarence Hale, U. S. District Judge.

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[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—December 19th, 1925

HALE, J.:

In No. 881, the plaintiff, a Michigan corporation, engaged in the business of selling automobiles, known as Chrysler cars, at wholesale to dealers in Maine and in other States, seeks to enjoin the defendant from bringing any prosecutions or proceedings for the recovery of penalties, or any civil actions, against the plaintiff or any dealers in its cars,—such dealers acting under the terms of certain alleged contracts of insurance between plaintiff and Palmetto Fire Insurance Company,—and from interfering with plaintiff's business in Maine, and from declaring or publishing any statement that plaintiff, or any one of its dealers in Maine, is violating any law of the State of Maine, regulating insurance business in Maine.

[fol. 40] In No. 882, the Utterback-Gleason Company, a Maine corporation, a dealer in Chrysler cars, and representing all dealers in Chrysler cars similarly situated in Maine, prays for a similar injunction against the defendant.

The plaintiffs in both cases aver that the Maine Statutes relating to the regulation of insurance in Maine do not apply to the conditions set forth by the plaintiff; and, if

they do, they are unconstitutional under the due process clause of the Fourteenth Amendment to the Constitution of the United States, and as undertaking to regulate interstate commerce and as impairing freedom of contract. The case is heard by a Court constituted under Section 266 of the Judicial Code.

In No. 881 the bill in equity alleges that the Chrysler Sales Corporation is a Michigan corporation engaged in buying and selling the entire output of Chrysler cars, now manufactured by a certain company called The Chrysler Corporation, organized in Delaware and having its factories in Michigan; that it sells its automobiles to dealers in Maine and in other States, and in other countries; that such dealers resell the cars to purchasers in the several States and countries; and that thereby they are selling and causing to be shipped articles in interstate commerce; that the articles so sold by the plaintiff are known as Chrysler cars; that they enjoy a favorable reputation with the public and are sold in rapidly increasing numbers; that the plaintiff has met with large success and does a large business at great cost; that at present there are more than three thousand such dealers in the several States selling Chrysler cars, and more than twenty-six such dealers in Maine; and that the sales of such dealers in Maine during the first half of the year 1925 exceeded two hundred thousand dollars.

That more than eighty per cent of automobiles sold to the American public are sold under plans whereby the purchasers at retail pay only part of the purchase price when they take delivery of the cars, and are given credit for the balance, made payable in installments. That it is the practice of dealers, who are not generally persons of large means, to assure themselves before selling the cars on time, of the services of some banking or finance company, which [fol. 41] agrees to purchase from them or to discount notes for them. Such finance companies are obliged to maintain organization to collect the payments for the cars and to watch that such cars are not disposed of before they are paid for; such companies always require that insurance against the perils of fire and theft be required in respect to the cars which they finance; that the charges for such financing, together with the cost of insurance and the interest on the unpaid balance of the purchase price have always

been paid by the retail purchasers of cars sold on time payment plan; that such charges have not been uniform, and have generally been high, and that, by all such charges, the price paid by the ultimate purchaser of the cars has been increased.

That plaintiff is now seeking to make arrangements to secure a uniform and moderate financing charge on all Chrysler cars; and that, in order to accomplish this, it has found it necessary to provide for uniform insurance protection on all Chrysler cars; that, to effect this, plaintiff is seeking to secure such insurance at a moderate cost by an open contract or policy of insurance made and to be performed, as it alleges, in Michigan, covering every Chrysler car against fire and theft for one year after date of purchase at retail for an amount not to exceed the factory list price; that, by such policy, adequate protection for every retail buyer of a Chrysler car may be provided. That uniform insurance is thus arranged, and a moderate and uniform financing system is made available for all sales of Chrysler cars on the installment plan; and that thereby the value of the Chrysler product is increased and a substantial saving is made; that, by such insurance, automatic protection for every retail buyer of the Chrysler cars and for any other parties having an interest therein or lien thereon can be obtained; and, uniform insurance being thus arranged, a moderate and uniform financing charge may be made available for all sales of Chrysler cars on the installment plan; and thereby the value of the Chrysler car to the ultimate buyer may be increased, and a real and very large saving made.

[fol. 42] That, having these facts in view, on or about June 16th, 1925, plaintiff duly executed, in the State of Michigan, a contract, or policy, of insurance with the Palmetto Fire Insurance Company, a South Carolina corporation, licensed to conduct business in Michigan, and having a general agency there, but not licensed to do business in Maine and not maintaining any agency in Maine; that this contract made with the Palmetto was to be performed in the State of Michigan, and that the Palmetto undertook to insure all Chrysler automobiles sold in the United States at retail, during the term of the policy, against fire and theft for one year from the date of sale, the insurance

being granted pursuant to the terms of the contract of insurance; that the original contract has been amended, and a copy of the policy now in use is made a part of the bill. It is called an open policy. Its term is for one year from July 1, 1925, covering against loss by fire or theft all Chrysler cars sold in the United States during the policy year. Under its term the insurer is to issue a certificate in the name of the plaintiff for the account of whom it may concern whenever a car is reported sold at retail. The form of the certificate is made part of the bill. The policy is to provide that omission to report the sale of a car or to issue a certificate in respect thereto shall not prevent the retail buyer of the car from being protected under the policy.

The bill alleges that only the plaintiff pays, or is liable to pay, to the insurance company the premium of the policy; that the premium is paid in Michigan and that the policy is kept in Michigan; and certificates are mailed by the insurance company from Michigan to the retail purchaser, that, when the retail sale of a car is made, the purchaser is protected by the Michigan contract of insurance that, whether the car is sold for cash or on time, the price is the same, except for a charge of eight per cent on any unpaid balance, if the car is sold on time; that no purchaser can obtain his car at a less price, whether or not he desires the protection of such insurance; that if cash purchasers desire other insurance, such insurance shall be merely excess insurance. When a sale is made the retail dealer reports to the Sales Company the name of the purchaser, the date of the sale, motor number, style and all necessary details, and plaintiff [fol. 43] notifies the agent of the insurance company in Michigan who mails the certificate of insurance from his office in Detroit to the purchaser, and counterparts of it to others who to his knowledge may have an interest in the car.

Plaintiff says that it is now, as aforesaid, selling large numbers of its cars in Maine to retail purchasers, on the above general plan; and it complains that the defendant, acting as Insurance Commissioner of the State, has announced to the public that, so far as insurance in the name of purchasers is effected, such sales of Chrysler cars are contrary to the laws of the State of Maine; and that the Chrysler dealer, in so selling cars in Maine, is violating

certain statutes of Maine; and it complains further that defendant is threatening to procure the arrest of dealers in Chrysler cars who are selling cars in Maine under the arrangement by which insurance is effected on the same. The plaintiffs in both cases assert that the dealers are in no sense agents within the meaning of the Revised Statutes of Maine; that they take no part in placing the contract of insurance; that the dealer cannot separate the premium from the cost of the car; that if the Maine Statutes brought in question are properly construed, they have no application; and, if construed to apply, they are violating the Federal Constitution.

Section 121 of Chapter 53 of the Revised Statutes of Maine, as amended by Chapter 25 of the Public Laws of Maine for 1917, is as follows:

"Sec. 121. Penalty for Soliciting Applications Without License Increased.—The insurance commissioner may issue a license to any person to act as an agent of a domestic insurance company, upon his filing with the commissioner a certificate from the company or association, or its authorized agent, empowering him to so act; and to any resident of the state to act as an agent of any foreign insurance company, which has received a license to do business in the State as provided in section one hundred and five or section one hundred and fifty upon his filing such certificate. Such license shall continue until the first day of next July. If any person solicits, receives or forwards any risk or application for insurance to any company, without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums, he shall be punished by a fine not exceeding two hundred dollars, or imprisonment not exceeding sixty days, for each offense; but any policy issued on such application binds the company if otherwise valid. Agents of duly authorized insurance companies may place risks with agents of other duly authorized insurance companies when necessary for the adequate insurance of property, persons or interests. An insurance agent shall be personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for or in behalf of any company not authorized to do business in the state. Nothing herein contained [fol. 44] shall require a duly licensed insurance agent or

broker to obtain any license for an employee doing only clerical work in the office of said agent or broker."

Plaintiff's say that no one of the provisions and inhibitions of this statute applies to any of the acts of the Sales Corporation or its twenty-six dealers—or more—in Maine. It contends that its contract is a contract of insurance, made and completed in Michigan and requiring no act to be done in Maine to effect its completion; that it takes effect upon a sale of a car at retail; and that, when so sold, the insurance becomes automatically effected, by virtue of the contract. We cannot sustain this contention. The Michigan contract appears to us not to be a completed insurance contract, but an agreement for future insurance. By its terms, the insurance does not become effective until the car is purchased in Maine from the dealer. The purchaser, when he becomes "assured," accepts the insurance and affirmatively states and warrants certain things in the contract to be "warranted by the Assured" to be true. He thereby makes certain distinct and affirmative agreements which become a part of his contract. If he purchased upon the deferred payment plan he arranges with the dealer for someone to finance the payments; and this financial agent becomes a beneficiary. Finally a certificate, the evidence of insurance, is mailed to the purchaser in Maine. In that certificate the purchaser, who has become the insured, "agrees that its terms embody all agreements then existing between himself and the company." The local dealer, we think, when he solicits the sale of the car, solicits also the incidental insurance provided for by the Michigan contract. He selects the beneficiaries; he notifies the Sales Company in Michigan by mail of details essential to the completion of the insurance contract; his acts, together with those of the purchaser, bring the contract into actual existence; and these acts occur in Maine. There is no such meeting of minds as gives life to the contract until the purchaser accepts the car and the insurance from the retail dealer in Maine.

In our opinion, the question is not affected by the fact that the acceptance of the contract is obviously intended to be forced upon the purchaser, the assured, by the fact that [fol. 45] the first year's insurance is already paid, regardless of whether the purchaser desires the insurance or not.

It is true that the dealer, who is himself the owner of the cars, does not hold himself out affirmatively and formally to be an insurance agent. He is not thinking much about insurance. He is bent on selling his cars. When he sells a car he is clearly making himself an instrument for effecting the insurance of it, although such insurance is incidental and deemed by him to be of little consequence. He effects this insurance in behalf of the Palmetto Company; and he has authority to so effect it. When he reports the sale to the Sales Company at Detroit, giving the name of the purchaser, the date of the sale, the motor number, the style of the car, and all elements required in order to issue an ordinary insurance policy,—and upon which certificate is actually issued—he seems to us to be giving the necessary information for effecting the insurance. In giving such information he is clearly acting for the Insurance Company. Within the meaning of the statute we think he “assumes to be an agent” and “procures risks and receives money for premiums,” even though such premiums are submerged in the term “delivery charges” and other expressions.

It is contended by the learned counsel for the plaintiffs that the Palmetto Company, a South Carolinian corporation, had an undoubted right to make a contract of insurance with a citizen of Maine; that the case is ruled by *Allegier v. Louisiana*, 165 U. S. 578, 587, in which case the point decided was that a statute of a State, punishing the owner of property for obtaining insurance thereon in another State, was unconstitutional. The insurance in that case was not procured by an agent in the State of the assured.

In *Hooper v. California*, 155 U. S. 648, the Court decided that a statute of California, by which Hooper was guilty of procuring insurance for a resident of California from a foreign insurance company which had not given bond as required by the laws of California, was constitutional. The Court upheld the principle that the right of a foreign corporation to engage in business within a State other than that of its creation depends solely upon the will of such other State, and illustrated that principle by a long line of [fol. 46] decisions. The Court decided that the business of insurance is not commerce; that a contract of insurance is not an instrumentality of commerce; the making of such a



contract is a mere incident of commercial intercourse. The Court held that the State of California has the power to exclude foreign insurance companies from its territory, or, if it allows such companies to enter the State, to determine the conditions under which the entry is to be made, and to regulate and enforce all legislation in regard to things done within the territory of the State which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious; subject always to the paramount authority of the Constitution of the United States. In *Allgeyer v. Louisiana*, *supra*, the Supreme Court based its decision upon the fact that the contract was made beyond the territory of the State of Louisiana; that nothing whatever was done in that State in relation to the completion of the contract; but that all that was done in that State was the mailing of the letter of notification; and that this was done after the principal contract had been fully effected. It expressly recognized *Hooper v. California*, *supra*, and distinguished it. In speaking for the Supreme Court, Mr. Justice Peckham quoted the language of Mr. Justice White in that case:

"It is said that the right of a citizen to contract for insurance for himself is guaranteed by the Fourteenth Amendment, and that, therefore, he cannot be deprived by the State of the capacity to so contract through an agent. The Fourteenth Amendment, however, does not guarantee the citizen the right to make within his State, either directly or indirectly, a contract, the making whereof is constitutionally forbidden by the State. The proposition that, because a citizen might make such a contract for himself beyond the confines of his State, therefore he might authorize an agent to violate in his behalf the laws of his State, within her own limits, involves a clear non sequitur, and ignores the vital distinction between acts done within and acts done beyond a State's jurisdiction."

In *Nutting v. Massachusetts*, 183 U. S., 553, 556, in speaking for the Supreme Court, Mr. Justice Gray said:

"A State has the undoubted power to prohibit foreign insurance companies from making contracts of insurance, marine or other, within its limits, excepting upon such conditions as the State may prescribe, not interfering with in-



terstate commerce. A contract of marine insurance is not an instrumentality of commerce, but a mere incident of commercial intercourse. The State, having the power to impose conditions on the transaction of business by foreign insurance companies within its limits, has the equal right to prohibit the transaction of such business by agents of such companies, or by insurance brokers, who are to some extent [fol. 47] the representatives of both parties. *Hooper v. California*, 155 U. S., 648; *Allgeyer v. Louisiana*, 165 U. S., 578."

We are of the opinion that the instant case is governed by the principles of the cases we have cited, and especially the *Hooper* case. We think these cases are decisive of the constitutionality of the statute in question and of other statutes found in Chapter 53 of the Revised Statutes of Maine undertaking to regulate insurance within the State. *Allgeyer v. Louisiana*, *supra*, does not, we think, make a path for the plaintiff to escape from the Maine insurance regulations. For, even though the insurance company may not be prevented from making in Michigan an insurance contract with a Maine citizen, it does not follow that such company may be permitted to place an agent in Maine to aid it in effecting such insurance, even though such agent is called a "dealer," and even though his main duty is to promote the sale of automobiles. In making sales of \$200,000 worth of Chrysler cars in the first six months of 1925, it is clear that the twenty-six "dealers" of the Sales Company in Maine promoted and effected a substantial volume of insurance business. Such insurance business the Maine Statutes had a right to regulate.

Questions similar to those raised in the instant case have been passed upon in certain unreported opinions by Courts organized as this Court is organized, under Section 266 of the Judicial Code. In *Palmetto Fire Insurance Company v. James A. Beha*, Superintendent of Insurance for the State of New York, the defendant was enjoined from revoking the license of the Palmetto Fire Insurance Company on the ground, as it appears, that the New York statutes do not prohibit the transactions involved in that case; and that such transactions being valid in Michigan, and not made valid in New York, no legal cause for the cancellation of the license existed. In some of the conclusions of law, as we un-

derstand them, we are not in agreement. In *Palmetto Insurance Company v. Harry L. Conn*, Superintendent of Insurance for the State of Ohio, the Court was called upon to enjoin the revocation of the license of the Palmetto Fire Insurance Company to do business in Ohio. It was held that the statute of that State prohibiting an insurance company [fol. 48] legally authorized to transact business in Ohio from writing, placing or causing to be written or placed, insurance upon property situated in that state—except through a legally authorized agent therein who should countersign all policies and enter the payment of the premium upon his record,—was valid so far as insurance corporations who had taken out licenses were concerned; and that such a license might properly be revoked if the statute was violated. The precise question there passed upon is not involved in the case before us. Neither of the above cases present the facts found in our record. They are not, of course, of binding force as authorities.

In *Chrysler Sales Company vs. W. Stanley Smith*, Commissioner of Insurance for Wisconsin, the Court had before it a case quite similar to the instant case; and we have derived real assistance from the clear opinion of Judge Luse. The statute in question was similar to our statute; the attempt was to enjoin the Insurance Commissioner. Judge Luse discusses a contract and plan substantially like the contract and plan in this case. In speaking for the Court he says:

“One of the important details of this contract and plan is that the effective date of the insurance is postponed until a car is sold at retail, and until title has passed from, not only complainant, but its distributors and dealers, and only takes effect upon a sale at retail and covers only the loss sustained by the retail purchaser and lien claimants whose claims grow out of the transaction of retail sale. When so sold, complainant claims, the insurance becomes automatically effective, by virtue of the Michigan contract. Plainly the theory of complainant is that this insurance is something that attaches to and follows an automobile upon its course in the market, as though a part or accessory, and that the dealer who sells the car has nothing to do with the insurance item,—he merely sells the car with all its equipment including the insurance. But this idea is erroneous

for, at least, two reasons: (1) the Insurance never had effective existence until the sale at retail, by its very terms, or, as it may differently be stated, it is only to be made operative by an act of the retail dealer, and (2) the legal concept of insurance is that in the absence of special circumstances it does not attach to property but to persons. As said by Story, J., in *Carpenter v. Providence Co.*, 16 Peters, 495, 503, quoting Lord Hardwick:

“ ‘The society are to make satisfaction in case of any loss by fire. To whom, or for what loss are they to make satisfaction? Why, to the person injured, and for the loss he may have sustained, for it cannot be properly called insuring the thing, for there is no possibility of doing it, and therefore must mean insuring the person from damage.’ ”

“ ‘A similar thought underlies the decision in *Paul v. Virginia*, 8 Wall. 168, wherein Justice Field says, referring to insurance contracts:

“ ‘These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of [fol. 49] trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one state to another and then put up for sale.’ ”

“ ‘And this thought has withstood numerous assaults as is indicated in *N. Y. Life Ins. Co. v. Deer Lodge County*, 231 U. S., 495. And so we conclude that the insurance feature of the sales of Chrysler cars in Wisconsin may not be treated as an appendage or bit of equipment of small relative cost, which passes with the transfer of the car, but must be approached as a contract between persons, the insurer and the insured, and in so far as an insurance results it must be viewed as a thing apart and distinct from the cars sold.’ ”

We have quoted quite fully from the opinion in the Wisconsin case because much of its language is apt and fitting to the record in the case at bar.

Judge Luse has shown that a contract of insurance is a personal contract between the insurer and the insured, and that the minds of both insurer and insured must meet in order to effect such insurance. The Statute of Maine de-

fining an insurance contract is illustrative of this point. Under Chapter 53, Section 1 of the Revised Statutes of Maine, a contract of insurance—life insurance being excepted—is “an agreement by which one party for a consideration promises to pay money or its equivalent, or to do some act of value to the assured, upon the destruction or injury of something in which the other party has an interest.” And it is further provided that such insurance business, involving the use of such contracts, shall be carried on only by duly incorporated insurance companies who have complied with the Maine regulations in regard to insurance.

We have already held that the Michigan contract is not an insurance contract in presenti, but is an agreement that insurance will be effected in future on the sale of a car. This element of personality becomes important in view of the fact that the Michigan contract is in favor of “Chrysler Sales Corporation and/or for account of whom it may concern.” But the personal quality of the contract is not affected by the words “for account of whom it may concern.” The leading case upon this class of policy is *Hooper v. Robinson*, 98 U. S., 528, 536. In speaking for the Supreme Court, Mr. Justice Swayne said:

[fol. 50] “A policy like the one here in question, in the name of a specified party ‘on account of whom it may concern,’ or with other equivalent terms, will be applied to the interest of the persons for whom it was intended by the person who ordered it, provided the latter had the requisite authority from the former, or they subsequently adopted it. 1 Phillips, Ins. Sect. 383.”

*Hagan v. Scottish Insurance Company*, 186 U. S., 423, 430, is also a leading case. In the latter case also “Phillips on Insurance” is cited:

“Sec. 385: The Rule, that an insurance ‘for whom it may concern’ will avail in behalf of the party for whom it is intended, does not mean that any specific individual must be intended. \* \* \* But he may intend it for whatever party shall prove to have an insurable interest in the specified subject, in which case it will be applicable to the interest of any person subsequently ascertained to have such an insurable interest, who adopts the insurance.

"Sec. 388. One may become a party to the insurance effected in his behalf, in terms applicable to his interest, without any previous authority from him, by adopting it, either before or after a loss has taken place and is known to him, though the loss may have happened before the insurance was made."

Open policies of this character have been most frequently found in maritime cases. A ship sails from sea to sea, and in many cases is for years away from its home port. In the meantime its owners are changing, and, in cases of loss, it often becomes difficult to trace the ownership. Courts have said that the contract may be made applicable to the interest of any person ascertained to have an insurable interest who "adopts" the insurance, even though such "adoption" is after the loss.

In the cases which we have cited upon that point the insurance was on a specific ship in one case and on a specific cargo in the other; the thing to which the insurance attached was, therefore, known when the blank policy was made, and the question was who had the insurable interest at the time of loss. In the case at bar there is no specific thing to which the insurance can attach until the "dealer" sells a car to a purchaser, and the purchaser accepts the car, with the insurance, and thereby becomes a party to the contract of insurance. There is, therefore, in the instant case, no question of the purchaser's insurable interest and no necessity of any further "adoption" of the contract. The contract of insurance clearly "concerns" the purchaser of the car.

[fol. 51] On the whole, we are of the opinion that the plaintiffs have not presented a case for an injunction against the defendant.

In view of our having passed upon the contract itself, which constitutes the vitals of the controversy, it is not necessary to discuss the question of jurisdiction. Nor is there any occasion for considering other Maine statutes alleged to have been violated. The motion for a preliminary injunction is denied.

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—January  
4, 1926

Chrysler Sales Corporation, plaintiff in above entitled action, in which plaintiff's application for temporary injunction was heard in accordance with the provisions of Section 266 Judicial Code and was determined adversely to plaintiff, considering itself aggrieved by the order and decree of the above named court against it, entered on the fourth day of January, 1926, denying the application for an interlocutory injunction in said cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, be sent to the Supreme Court under the rules of said Court in such case made and provided.

Dated this fourth day of January, 1926.

Andrews, Nelson & Gardiner, Attorneys for said  
Petitioner.

The foregoing appeal is allowed.

Dated January 4, 1926.

Charles F. Johnson, U. S. Circuit Judge. John A.  
Peters, U. S. District Judge. Clarence Hale, U. S.  
District Judge.

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[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—January 4, 1926

Plaintiff in connection with petition for appeal herein presents and files therewith its assignment of errors as to which matters and things it says that the order entered

herein on the fourth day of January 1926, is erroneous, to wit:

First. That the court erred in refusing interlocutory injunction as prayed.

Second. That the court erred in holding that distributors of and dealers in Chrysler automobiles in Maine, selling in Maine automobiles the purchasers of which are protected by insurance contract effected in Michigan between the Chrysler Sales Corporation and Palmetto Fire Insurance Company, as set out in complaint, and doing acts incidental to such sales, are violating the penal provisions of Maine Statutes, and particularly Section 121 of Chapter 53 of the Revised Statutes of Maine, as amended by the Public Laws of 1917, Chapter 25.

Third. That the court erred in holding that by virtue of the contract of insurance between Chrysler Sales Corporation and Palmetto Fire Insurance Company made in Michigan and the sale of Chrysler cars in Maine by dealers in and distributors of Chrysler cars in Maine and acts incidental [fol. 54] thereto, as set out in complaint, said Palmetto Fire Insurance Company is transacting an insurance business in Maine, and in not holding that Section 57 of Chapter 9 of the Maine Revised Statutes, purporting to levy a tax on premiums paid on unauthorized insurance contracts covering property in Maine, is invalid and in violation of the Constitution of the United States.

Fourth. That the court erred in holding that dealers in and distributors of Chrysler cars in Maine are agents of and for the Palmetto Fire Insurance Company in respect to business of that company transacted in the State of Maine.

Fifth. That the court erred in refusing to hold that Section 121 of Chapter 53 of the Maine Revised Statutes, as amended by the Public Laws of 1917, Chapter 25, has no application to dealers in and distributors of Chrysler automobiles in Maine.

Sixth. That the court erred in refusing to hold that Section 122 of Chapter 53 of the Revised Statutes of Maine, as amended by Chapter 25 of the Public Laws of 1917, has no

application to dealers in and distributors of Chrysler automobiles in Maine.

Seventh. That the court erred in refusing to hold that Section 129 of Chapter 53 of the Revised Statutes of Maine has no application to dealers in and distributors of Chrysler automobiles in Maine.

Eighth. That the court erred in holding that by virtue of the acts and transactions of dealers in and distributors of Chrysler cars in Maine described in complaint, and contract made in Michigan between Chrysler Sales Corporation and Palmetto Fire Insurance Company, and the operation of said contract, said Palmetto Fire Insurance Company is unlawfully transacting an insurance business in Maine.

Ninth. That the court erred in refusing to hold that the dealers in and distributors of Chrysler cars in Maine are [fol. 55] not violating any law of Maine, and that there is no Maine law sanctioning or supporting the prosecutions or actions against such dealers and distributors threatened by defendant.

Tenth. That the court erred in holding that the threatened acts of defendant, Wilbur D. Spencer, are supported and sanctioned by law, and in refusing to hold that said threatened acts and proceedings are not supported by law but are contrary to law and beyond the power of defendant and threaten to cause irreparable injury and damage to plaintiff.

Eleventh. That the court erred in holding that Section 121 of Chapter 53 of the Revised Statutes of Maine, as amended by Chapter 25 of the Public Laws of 1917, construed as prohibiting the acts of Chrysler dealers and distributors, as set out in the complaint, is a valid law and does not violate any provision of the Constitution of the United States.

Twelfth. That the court erred in refusing to hold that the Statutes of the State of Maine in so far as they may be construed as prohibiting or penalizing the acts of dealers in and distributors of Chrysler cars in Maine are invalid as in violation of the Constitution of the United States, in that such statutes so construed take the property of said dealers



and distributors without due process of law and take the property of the plaintiff herein without due process of law and deny to said dealers and distributors and to plaintiff the equal protection of the law and prohibit the sale of plaintiff's property by independent dealers in Maine by virtue of the fact that plaintiff has effected in Michigan a contract of insurance protecting and benefitting all retail purchasers of plaintiff's product, thus attempting to penalize the making of a contract of insurance outside the state of Maine and to lay a burden thereon and because said statutes so construed destroy and take away without due process the liberty of contract of said dealers and distributors, being [fol. 56] the customers of plaintiff in Maine to the prejudice and destruction of plaintiff's business, and because said statutes so construed violate the 14th Amendment to the Constitution of the United States, and also Article IV, Section 1 and Article I, Section 10 of said Constitution of the United States.

Thirteenth. That the court erred in refusing to hold that the threatened acts of the defendant would deprive the plaintiff of its property without due process of law and deny plaintiff the equal protection of the law in violation of the 14th Amendment to the Constitution of the United States.

Fourteenth. That the court erred in refusing to hold that in so far as Maine statutes are construed as prohibiting the acts of Chrysler distributors and dealers in Maine, they impose a burden and prohibition on interstate commerce contrary to the Constitution of the United States.

Wherefore plaintiff prays that the order and decree may be reversed and that plaintiff may have an adjudication and decree in its favor.

Dated this fourth day of January, 1926.

Andrews, Nelson & Gardiner, Attorneys for Plaintiff.

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[fols. 57 & 58] Bond on appeal for \$500.00 approved; omitted in printing.

[fol. 59] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—January 4, 1926

Chrysler Sales Corporation, plaintiff above named having filed its petition for an appeal herein and therewith its assignment of errors, now on motion of Andrews, Nelson & Gardiner, attorneys and solicitors for plaintiff, in term time and at the same term of the order and decree below mentioned, it is ordered that the appeal of said plaintiff, Chrysler Sales Corporation, from the interlocutory order and decree of this court heretofore filed and entered herein on the fourth day of January, 1926, be and it hereby is allowed, as prayed for, the amount of the appeal bond on said appeal being hereby fixed at the sum of Five Hundred Dollars with surety to be approved by the court or judge thereof or clerk thereof.

And it now appearing that the appellant has executed its appeal bond in the said sum of Five Hundred Dollars with Fidelity and Deposit Company of Maryland as surety thereon and has presented the same for approval, said bond and surety are now hereby approved.

Dated January 4, 1926.

Charles F. Johnson, U. S. Circuit Judge. John A. Peters, U. S. District Judge. Clarence Hale, U. S. District Judge.

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[fol. 60] Citation in usual form showing service on Raymond Fellows and Sanford L. Fogg, omitted in printing.

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[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRECIPE FOR TRANSCRIPT OF RECORD

To the clerk of the above-named court:

Please make up and certify the record in this cause to be transmitted to the Supreme Court of the United States on

the appeal of the Chrysler Sales Corporation and include in said record the following:

- (1) Petition for appeal on said appeal.
- (2) The assignment of errors on said appeal.
- (3) The bond on said appeal and approval at foot thereof.
- (4) The order allowing said appeal.
- (5) The citation on appeal and admission of service thereof and of notice of said appeal.
- (6) The precipe for the transcript on said appeal.
- (7) The verified bill of complaint filed in this cause, including exhibit attached thereto.
- (8) The application for hearing under Section 266, Judicial Code, and motion for temporary restraining order filed September 3, 1925.
- (9) The order to appear for hearing September 15, 1925 with record of service of same upon the defendant, the Governor of the State of Maine and the Attorney General of the State of Maine.
- (10) The order of the court of January 4, 1926 denying applications for temporary injunction, together with a copy [fol. 62] of the opinion rendered in the case of the Chrysler Sales Corporation vs. Wilbur D. Spencer, Insurance Commissioner of the State of Maine.

(11) Clerk's certificate authenticating the record.  
Dated January 5, 1926.

Andrews, Nelson & Gardiner, Attorneys for Chrysler  
Sales Corporation, Appellant.

Augusta, Maine, January 5, 1926.

Seen and agreed to. Notice of filing acknowledged.

Raymond Fellows, Attorney General. Sanford L.  
Fogg, Deputy Attorney General, Attorneys for  
Wilbur D. Spencer, Insurance Commissioner of  
the State of Maine, Defendant and Appellee.

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[fol. 63] Citation and service omitted; printed side page  
60, ante.

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[fol. 64] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 65] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION  
BY APPELLANT OF PARTS OF THE RECORD TO BE PRINTED—  
Filed February 3, 1926.

To the clerk of the above-entitled court:

Now comes the appellant, Chrysler Sales Corporation, and in pursuance of Rule 11, Subdivision 9 of the Rules of the United States Supreme Court, states that the points on which it intends to rely are:

1. That the plaintiff in justice and in equity is entitled to an interlocutory injunction.

2. That the various statutes of the State of Maine which this plaintiff is purported to have violated are not applicable to this plaintiff.

3. If said statutes be construed to be applicable to the plaintiff then those statutes are contrary to the Constitution of the United States and void.

4. The plaintiff further intends to rely as a statement of its points on all the assignments of error filed in the court and appearing in the Transcript of Record here.

That it will be necessary for the consideration of these points to incorporate in the transcript in this appeal, the following:

[fol. 66] The entire record as certified to this court by the Clerk of the District Court of the United States, for the District of Maine, Southern Division.

Nicholas Kelley, Solicitor for Plaintiff.

Dated Portland, Maine, February 2, 1926.

[fol. 67] [File endorsement omitted.]

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Endorsed on cover: File No. 31,626. Maine D. C. U. S. Term No. 903. Chrysler Sales Corporation, Appellant, vs. Wilbur D. Spencer, insurance commissioner of the State of Maine. Filed January 21st, 1926. File No. 31,626.



**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1928**

**No. 274**

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**UTTERBACK GLEASON COMPANY, APPELLANT,**

**vs.**

**WILBUR D. SPENCER, INSURANCE COMMIS-  
SIONER OF THE STATE OF MAINE**

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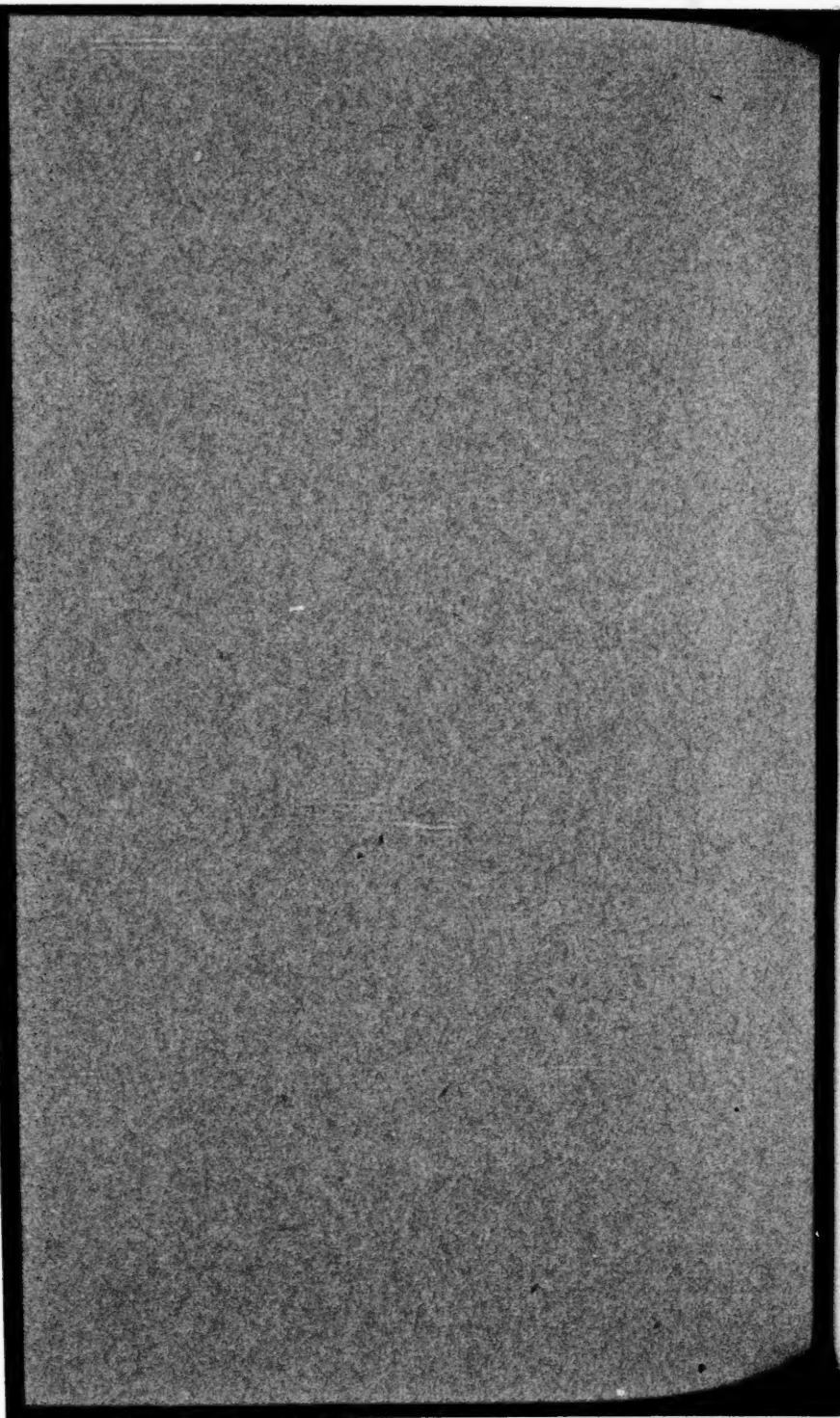
**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MAINE**

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**FILED JANUARY 31, 1929**

**(31,627)**



(31,627)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 904

UTTERBACK-GLEASON COMPANY, APPELLANT,  
*vs.*

WILBUR D. SPENCER, INSURANCE COMMISSIONER OF THE STATE OF MAINE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MAINE

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[fol. 1] [Caption omitted]

[fol. 2]

**IN UNITED STATES DISTRICT COURT, DISTRICT  
OF MAINE, SOUTHERN DIVISION**

UTTERBACK-GLEASON COMPANY, a Maine Corporation,  
Plaintiff,

vs.

WILBUR D. SPENCER, Insurance Commissioner of the State  
of Maine, Defendant

BILL OF COMPLAINT—Filed September 3, 1925

To the Honorable the Judge of the District Court for the  
District of Maine:

The plaintiff above named for its bill of complaint herein  
respectfully shows to this Honorable Court:

(1) Plaintiff, Utterback-Gleason Company, is a corporation duly organized and existing under and by virtue of the laws of the state of Maine, and its principal office and place of business is located in the City of Bangor, County of Penobscot, and State of Maine; and said corporation is a citizen of said state of Maine.

(2) Defendant, Wilbur D. Spencer is the duly appointed, qualified and acting Insurance Commissioner of the State of Maine, and is a citizen and resident of the State of Maine, and of the District of Maine, Southern Division.

(3) The ground upon which the jurisdiction of this Court depends is that this action arises under the constitution and laws of the United States.

(4) The matter in controversy exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars (\$3,000).

[fol. 3] (5) Plaintiff is engaged in the business of buying from the Chrysler Sales Corporation, a corporation duly organized and existing under and by virtue of the laws of



[fol. 1] [Caption omitted]

[fol. 2]

**IN UNITED STATES DISTRICT COURT, DISTRICT  
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To the Honorable the Judge of the District Court for the  
District of Maine:

The plaintiff above named for its bill of complaint herein  
respectfully shows to this Honorable Court:

(1) Plaintiff, Utterback-Gleason Company, is a corporation duly organized and existing under and by virtue of the laws of the state of Maine, and its principal office and place of business is located in the City of Bangor, County of Penobscot, and State of Maine; and said corporation is a citizen of said state of Maine.

(2) Defendant, Wilbur D. Spencer is the duly appointed, qualified and acting Insurance Commissioner of the State of Maine, and is a citizen and resident of the State of Maine, and of the District of Maine, Southern Division.

(3) The ground upon which the jurisdiction of this Court depends is that this action arises under the constitution and laws of the United States.

(4) The matter in controversy exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars (\$3,000).

[fol. 3] (5) Plaintiff is engaged in the business of buying from the Chrysler Sales Corporation, a corporation duly organized and existing under and by virtue of the laws of

the State of Michigan, Chrysler cars and parts for same and selling the same at wholesale to dealers in Bangor and surrounding territory in Maine, and also at retail to buyers of automobiles in said territory. Said Chrysler Sales Corporation has its principal place of business in Detroit, Michigan and buys the entire output of Chrysler cars from the Chrysler Corporation and resells same to distributors such as plaintiff in this action, said distributors being very numerous and located and doing business in all parts of the United States. All automobiles sold by said Chrysler Sales Corporation to distributors and dealers in the United States, except automobiles sold to distributors having their place of business in Michigan, are sold in interstate commerce, and are shipped in interstate commerce from Detroit, Michigan, to distributors and dealers in states other than Michigan, including plaintiff and other distributors and dealers in the State of Maine. Plaintiff and other distributors in the State of Maine buy said automobiles in interstate commerce. When plaintiff and other distributors in Maine resell said automobiles purchased from said Chrysler Sales Corporation to dealers or retail purchasers in Maine as hereinafter set out, plaintiff and such other distributors sell an original article of interstate commerce. The automobiles manufactured by said Chrysler Corporation and so sold by plaintiff are known as Chrysler cars, enjoy a favorable reputation with the Maine public and have been and are being purchased by said public in rapidly increasing numbers. Plaintiff buying direct from the Chrysler Sales Corporation is known as a distributor and dealers who buy from plaintiff and sell only at retail [fol. 4] are known as dealers. Such dealers who buy from plaintiff are not employed by plaintiff or the Chrysler Sales Corporation but are customers of plaintiff. Said dealers who buy from plaintiff are numerous and the retention of their business is of great value to plaintiff and its loss or impairment would cause great financial loss to plaintiff greatly exceeding \$50,000. The extent of such loss could not be measured nor be compensated by damages. Plaintiff has expended large sums of money and much time and service in securing said dealers who buy Chrysler cars from plaintiff and sell to the public in said territory. Plaintiff has acquired and built up a valuable business with said

dealers which is a very valuable property right and is dependent on the retention of said dealers as customers and on the retention of the good will of said dealers and on giving satisfaction to the buying public.

(6) A very large percentage of automobiles of all makes sold to the American public are and for a considerable period of time have been sold under plans whereby the purchasers at retail only pay part of the purchase price at the time of taking delivery of the car and are given credit for the balance which is usually made payable in installments. Ordinarily distributors and dealers have not sufficient capital to enable them to hold themselves the evidences of the unpaid balances due upon the automobiles thus sold on credit. It is the common practice for the distributors and dealers before selling cars on time to assure themselves of the services of a bank or finance company which agrees to purchase from them or to discount for them the notes, or other evidences of the balances due. The banks or finance companies rendering such services are obliged to maintain organizations to collect the payments when they are due and to watch that the cars are not improperly disposed of before [fol. 5] they are paid for. They always require that insurance against the perils of fire and theft be effected in respect to the cars which they finance. In order to cover the expenses of collecting the instalments and of guarding against the making away with cars before full payment of the instalments the finance companies have made substantial charges. These charges together with the cost of insurance and the interest on the unpaid balance of the purchase price, have always been paid by the retail purchasers of automobiles on time payment plan. The charges of finance companies have not been uniform and have been generally high. The placing of insurance has been largely controlled by finance companies and the insurance business has been rapidly getting away from local insurance agents. In many instances local dealers have become connected with finance companies sharing in profits made by such companies. Frequently purchasers of cars of many makes have paid excessive finance charges. This has increased the ultimate price paid by the consumer. For a long time it has been apparent to plaintiff and others engaged in the automobile business that a great service would be per-

formed to buyers of cars if a uniform insurance protection and the benefit of a moderate and uniform financing charge applicable to all retail time purchasers could be obtained. The Chrysler Sales Corporation was the first automobile company to work out and announce arrangements for securing this result.

(7) On or about the 16th day of June, 1925, said Chrysler Sales Corporation and the Palmetto Fire Insurance Company, an insurance corporation duly organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office in Sumter, in said state, and duly authorized and licensed to conduct and transact business of writing direct fire and theft insurance in the state of Michigan, but not licensed to do business in the State of [fol. 6] Maine, and not doing any business or maintaining any agency therein, duly executed in the State of Michigan a contract or policy of insurance made and to be performed in the State of Michigan, wherein and whereby said Palmetto Fire Insurance Company undertook to insure all Chrysler automobiles sold in the United States at retail during the term of the policy against fire and theft for one year from the date of such sale, said insurance being granted under and pursuant to the terms and conditions of said contract or policy of insurance. On or about the 4th day of August, 1925, said contract or policy was superseded and modified, and the superseding and modifying contract or policy was by agreement between said Chrysler Sales Corporation and said Palmetto Fire Insurance Company made retroactive to the effective date of the original contract or policy of June 16, 1925, and said superseding and modifying contract or policy of insurance dated August 4, 1925, has at all times since August 4, 1925, been in force and effect and is now in force and effect. A copy of said policy is attached hereto, marked Exhibit "A" and made a part of this bill.

(8) Said contract or policy is what is known as an open policy. Its term is for one year from July 1, 1925, covering against loss by fire or theft all Chrysler cars sold in the United States during the policy year for the full factory list price f. o. b. Detroit, for a term of one year from the date of sale to the retail purchaser. Under the terms of said contract or policy insurer is to issue a certificate in the

name of Chrysler Sales Corporation for the account of whom it may concern whenever a car is reported sold at retail. Said policy expressly provides, however, that omission to report the sale of a car or to issue a certificate in respect thereof shall not prevent the retail buyer of the car and others interested from being protected under said [fol. 7] policy. Only said Chrysler Sales Corporation pays, or is liable to pay to said Palmetto Fire Insurance Company the agreed premium on said policy, and said premium is paid in the State of Michigan. Certificates are mailed by the Insurance Company from Michigan to the retail purchasers of said cars as a memorandum of the coverage afforded by said open policy, with counterparts to others known to have an interest in the respective cars.

(9) Said Chrysler Sales Corporation having entered into said contract or policy thereupon obtained and made available to retail purchasers of Chrysler cars a reduced uniform finance rate for time purchases, to-wit, eight per cent of the unpaid balance and announced the same to the public. When retail sale of a Chrysler car is made, whether for cash or on time, the purchaser and other parties interested are protected by the said Michigan contract made between plaintiff and said Palmetto Fire Insurance Company. Whether said car is sold for cash or on time, the price is the same, except for said finance charge of eight per cent on unpaid balance if the car is sold on time. No purchaser may obtain his car at a less price whether or not he desires the protection of such insurance. The insurance comes into effect under the Michigan contract made by said Chrysler Sales Corporation with said Palmetto Fire Insurance Company, and neither the plaintiff herein nor any other distributor or dealer can do anything to prevent this insurance coming into effect. For the protection of purchasers who may desire to themselves take out insurance giving them protection other than that provided by said contract or policy, said policy provides that if such purchaser takes other insurance, the insurance under said policy shall be merely excess insurance.

(10) Plaintiff is not an agent of the Chrysler Sales Corporation. Plaintiff is conducting its own business. The [fol. 8] course of the business is as follows: Plaintiff buys



Chrysler cars from said Chrysler Sales Corporation for a cash price computed as follows: List price less a given discount, plus war tax and certain delivery charges. From time to time as occasion may have required changes have been made in amount of list price, discount, or delivery charges which have also been known as handling charges or unloading charges. In computing the discount there is not included either the war tax, freight or the delivery charge. Plaintiff pays the freight and charges an increased price to dealers because of having paid said freight or otherwise taken care of transportation of cars to territory in which plaintiff sells cars as above stated. Plaintiff sells to dealers in said territory for cash at a price arrived at by deducting a certain discount from the list price and adding freight or transportation charge, war tax and delivery charges. The dealer in turn sells to the retail purchaser at a price equal to the list price plus freight or transportation charges, war tax, and delivery charge. The retail dealer reports to Chrysler Sales Corporation the name of the purchaser, date of sale, motor number, style, etc., on retail sales made. Thereafter said retail purchaser and other parties having an interest in the car receive by mail from said insurance company from its office in Detroit certificates which state the coverage afforded by said Michigan insurance contract. On July 1, 1925, the delivery charge on all models of Chrysler cars was increased and fixed at a certain amount for each type of Chrysler car.

(11) Neither plaintiff nor any of the dealers selling Chrysler cars in plaintiff's territory above referred to takes any part in the writing or placing of said insurance under said Michigan contract. Neither plaintiff nor any such dealer solicits or receives or transmits any application for insurance. No arrangement that plaintiff or any dealer should make with any purchaser can change the protection afforded by the policy or prevent it from taking effect. Neither does plaintiff or any such dealer solicit, demand, receive or transmit any premium. Plaintiff and every such dealer must pay for each car on receipt of same the full price as above set out and cannot get back any part of said purchase price paid for the car. What plaintiff and each such dealer receives from any purchaser upon the sale of a car is the absolute property of plaintiff

or such dealer. It is the proceeds of the sale of its or his own property which has already been paid for. Neither plaintiff nor any such dealer is bound to or does transmit to anybody as a premium for insurance or in any other guise any part of such purchase price. Neither plaintiff nor any such dealer acts in any manner in behalf of or as an agent or employe of said Palmetto Fire Insurance Company. Neither the plaintiff nor any such dealer receives any commission or other compensation in any form on or by virtue of the insurance protection afforded to the retail purchaser by said Michigan contract.

(12) Chrysler cars are now being sold in Maine in large numbers by plaintiff and dealers who buy from plaintiff and others. The retail purchaser thereof and other parties interested in said cars wherever said purchasers or parties may reside are protected by said insurance policy. Defendant claiming to act as Insurance Commissioner of the State of Maine has ruled and announced to the plaintiff and to said Chrysler Sales Corporation, and to the public that the sale of Chrysler cars, pursuant to the plan hereinbefore described, wherein and whereby the purchasers become protected by the Michigan insurance contract as above stated is contrary to the laws of the State of Maine, and that plaintiff and every Chrysler distributor or dealer [fol. 10] selling Chrysler cars in Maine is violating the criminal and civil laws of said state, including among others the following Statutes: Sections 121 and 122 of Chapter 53 of the Revised Statutes of Maine as amended by Chapter 25 of the Public Laws of 1917 and Section 129 of Chapter 53 of the Revised Statutes of Maine; and other statutes not specified by defendant. Defendant has threatened and is now threatening to procure the arrest and conviction of every Chrysler distributor or dealer selling in Maine any Chrysler car the purchaser of which is or may be protected under said insurance contract made between Chrysler Sales Corporation and Palmetto Fire Insurance Company. Plaintiff and a number of dealers buying Chrysler cars from plaintiff as hereinbefore stated have sold a considerable number of Chrysler cars pursuant to the course of business hereinbefore described since July 1, 1925, the retail purchasers being protected by said Michigan contract of insurance as hereinbefore alleged and defendant threat-

ens to immediately institute both criminal and civil proceedings against plaintiff and said dealers on account thereof and on account of any future sales so made. It is not possible for plaintiff or any such dealers to sell Chrysler cars at all without the retail purchaser and other parties interested receiving such insurance protection. Plaintiff and said dealers are now in a position where they must either abandon the sale of Chrysler cars, thereby sustaining large and irreparable loss of business and good will, and their investment in advertising and in developing a market for Chrysler cars, or continue to sell as hereinbefore described. Defendant has sent out and is giving out and publishing letters and communications stating that said Chrysler Sales Corporation and its distributors and dealers in Maine, including the plaintiff and said Palmetto Fire Insurance Company, are violating the law of Maine by virtue of sales of cars as hereinbefore alleged. By and as the [fol. 11] result of said threats and communications published by defendant, dealers and prospective retail buyers of Chrysler cars in plaintiff's said territory in Maine are being harassed and intimidated and brought into a state of uncertainty seriously and irreparably injurious to plaintiff's business. Unless relief by temporary restraining order is immediately granted to plaintiff against said threats and said threatened acts of defendant plaintiff's business will be destroyed or irreparably damaged and plaintiff will suffer immediate and irreparable loss and damage before the matter can be heard on notice. Unless said restraining order is followed by temporary injunction against said acts and threatened acts pending this action and until final decree irreparable loss and damage will result to plaintiff before the merits of this action can be finally determined. Plaintiff has no adequate remedy at law. The injuries done by said acts and threats of defendant are not and will not be compensable by damages. The actions threatened by defendant would result in multiplicity of prosecutions which would irreparably damage and injure the sale of Chrysler cars in plaintiff's said territory and irreparably injure the good will of plaintiff and the value of plaintiff's business. Unless immediately restrained defendant will cause the arrest and prosecution of plaintiff and said dealers and of others under the statutes

hereinbefore mentioned which impose extremely severe penalties and forfeitures. The result of said arrests and prosecutions would be to practically destroy plaintiff's business in Chrysler cars and plaintiff's property and good will hereinbefore referred to, irrespective of the final outcome of said arrests and prosecutions and irrespective of the final outcome of this action. The penalties and forfeitures under said statutes, if said statutes can and do prohibit the acts of plaintiff and said dealers hereinbefore mentioned, apply to each sale made by plaintiff and each such dealer as a separate offense and in the aggregate would reach such a large sum as to preclude a test of the [fol. 12] validity of said statutes by awaiting the threatened arrests and actions.

(13) If and to the extent that the laws of the State of Maine purport or may be construed to prohibit plaintiff and other distributors and dealers in Chrysler cars in Maine from making sales in the manner hereinbefore set forth of any automobiles the retail purchasers of which shall be protected by said contract in Michigan, or to subject plaintiff and said dealers and distributors to criminal prosecution and punishment or to forfeiture by reason of sales so made by them, or purport or may be construed to invalidate or otherwise apply to said insurance contract made by Chrysler Sales Corporation in Michigan with Palmetto Fire Insurance Company, and the protection afforded by same to purchasers of Chrysler cars in Maine and others interested in said cars, then to that extent said state statutes are void as violating and as contrary to the constitution of the United States and amendments thereto and particularly the Fourteenth Amendment thereof by reason of attempting unlawfully to regulate and burden interstate commerce, depriving the plaintiff and said customers of plaintiff of property without due process of law, impairing the freedom of contract guaranteed by the Federal Constitution and denying to the plaintiff and said dealers the equal protection of the law, and as attempting to regulate, prohibit and burden the making and performance of a contract lawfully made and to be performed outside the limits of the State of Maine, and thereby denying full faith and credit to the laws of Michigan governing said contract or

policy and under which the same is valid. For the same reason, the said acts and communications, rulings and threats of defendant as Insurance Commissioner of the state of Maine as hereinbefore alleged are likewise a violation of the Constitution of the United States.

(14) There are many persons in Maine who have sold [fol. 13] and are selling Chrysler cars in the same manner as plaintiff and dealers of plaintiff as hereinbefore described and who are affected and will be affected by the acts and threatened acts of defendant hereinbefore referred to in the same manner as plaintiff and whose situation as to the subject matter of this action is substantially the same as plaintiff's. Said parties are so numerous that filing a separate bill for each or joining them in a bill, or bringing them all before the court, is impracticable. This action is brought for the benefit of plaintiff and all such parties so similarly situated.

(15) For as much therefore as plaintiff is without remedy in the premises except in a court of equity and to the end that plaintiff may obtain from this Honorable Court that relief to which plaintiff is by right and equity entitled, plaintiff respectfully prays that the above named defendant be directed to full true and perfect answer make to this bill of complaint, but not under oath, answer under oath being hereby expressly waived, and that defendant, and his successors in office, and his deputies, agents and employes and all persons acting for him be permanently restrained and enjoined from bringing or causing to be brought or threatening to bring or to cause to be brought any prosecutions or any actions or proceedings for the recovery of penalties or forfeitures or any civil actions or proceedings against the plaintiff or against any distributors of or dealers in Chrysler cars in Maine based on or purporting to be based on or by reason of said contract of insurance between said Chrysler Sales Corporation and Palmetto Fire Insurance Company or based on or purporting to be based on or by reason of any rights existing or arising in favor of residents of Maine or in respect to property situated in Maine by reason of the existence of said contract of insurance or the performance thereof or the sale of Chrysler cars in [fol. 14] Maine, or based on or purporting to be based on

or by reason of any of the acts done or to be done or business transacted or to be transacted by plaintiff or by any distributor of or dealer in Chrysler cars in Maine as described in detail in said bill of complaint and from interfering in any other manner with it or their said business as aforesaid and from issuing, declaring or publishing any statement official or otherwise that plaintiff or any of said distributors or dealers is violating any law of the State of Maine by virtue of any of the acts or transactions set forth in this bill of complaint. Plaintiff further prays that pending the final hearing and determination of this action a temporary injunction be granted restraining defendant and his successors, in office, his deputies, employes and all persons acting under him as hereinbefore prayed and that on final hearing said injunction be made perpetual. Plaintiff further prays for such other and further relief as may be equitable and proper in the premises.

Wherefore plaintiff prays that a writ of subpoena issue herein, directed to the above named defendant, Wilbur D. Spencer, Insurance Commissioner of the State of Maine, commanding him on a day certain to appear and answer to this bill of complaint.

Utterback-Gleason Company. Andrews, Nelson & Gardiner, Solicitors for Plaintiff. Larkin, Rathbone & Perry, of Counsel.

[fol. 15] *Duly sworn to by James Irving Gleason. Jurat omitted in printing.*

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[fol. 16] EXHIBIT "A" TO BILL OF COMPLAINT

Non-valued Fire, Theft, & Transportation Form

No. A-9657. Automobile Policy

Palmetto Fire Insurance Company, Sumter, South Carolina,

In consideration of the warranties and the premium hereinafter mentioned, does issue the assured named therein, and legal representatives, for the term herein specified, to an amount not exceeding the amount of insurance herein

specified, against direct loss or damage, from the perils insured against, to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) of the automobiles described herein while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and Canada and Mexico, including while in building, on road, on railroad car or other conveyance ferry or inland steamer, or coastwise steamer between ports within said limits,

Amount: \$ As specified. Premium: As agreed.

Name and address of assured: Chrysler Sales Corporation, Detroit, Michigan.

and/or for account of whom it may concern as hereinafter specified. The term of this policy begins at noon on the 1st day of July, 1925, and ends at noon on the 1st day of July, 1926, standard time. (All certificates issued hereunder, however, remaining in full force and effect for the term specified in such certificates.)

Amount of Insurance: As specified. — dollars (\$—).

### Warranties

The following are statements of facts known to and warranted by the Assured to be true, and this policy is issued by the Company relying upon the truth thereof:

1. Assured's occupation or business is: This information not required by insurer.
2. The following is the description of the automobiles: Information not required except as hereinafter specified.
3. The facts with respect to the purchase of the automobile described are as follows: This information not required by insurer except as hereinafter specified.
4. The uses to which the automobile described are and will be put, are: This information not required by insurer.
5. The automobile described is usually kept in garage, located: This information not required by insurer.



### Non-vitiation Clause

Anything hereinafter contained to the contrary notwithstanding, the insurance provided for herein shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which any automobile covered by such insurance shall be used (except the unlawful transportation of liquor) nor by the nature of the occupation or business of any of the Assured, nor by the location where any such automobile is kept.

#### [fol. 17] Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

#### Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies;

War, Riot, etc.:

(b) Loss or damage caused directly or indirectly by invasions, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.



This entire policy shall be void unless otherwise provided by agreement in writing added hereto:

### Title and Ownership

(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership; or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder—

(a) While encumbered by any lien or mortgage.

### Conditions

Limitation of Liability and Method of Determining Same.—This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

**Loss for Which Bailee for Hire is Liable.**—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 18] way of loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

**Noon.**—The word "Noon" herein means noon of standard time at the place the contract was made.

**Misrepresentation and Fraud.**—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

**Protection of Salvage.**—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

**Notice and Proof of Loss.**—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Com-

pany, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the county and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company, and if appraisal is de-

[fol. 19] manded, then not until sixty days after an award has been made by the appraisers.

Subrogation.—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

Suit Against Company.—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall fully comply with all the foregoing requirements, nor unless commenced within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions, and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

In witness whereof this Company has executed and attested these presents but this policy shall not be valid unless countersigned by a duly authorized agent of the Company.

P. Moses, President. Davis D. Moise, Vice-President.

Countersigned at Detroit, Michigan, this 4th day of August 1925.

Edwin J. Carter, Agent.

Rider Attached to and Forming Part of Policy No. A-9657 of the Palmetto Fire Insurance Company, Herein Called "Insurer"

This rider shall supersede and take the place of anything to the contrary in the conditions and provisions of the policy to which it is attached.

## I

### Definitions

The following words whether singular or plural, unless the context otherwise requires, shall be given the following meanings:

Chrysler shall mean Chrysler Sales Corporation, a Michigan Corporation of Highland Park, Michigan, its successors and assigns.

Finance companies shall mean banks, trust companies, finance or credit companies, corporations, partnerships, trusts, dealers, individuals and other organizations who may finance the retail sale or lease of Chrysler cars.

Chrysler cars shall mean new and unused commercial passenger automobiles sold or distributed by Chrysler and which have been or may hereafter be manufactured by Chrysler Motor Corporation, a Delaware corporation, of Detroit, Michigan, its successors or assigns.

To fianance shall mean to purchase or loan upon, or to cause to be purchased or loaned upon, to discount or otherwise acquire the notes and/or security instruments made and given to dealers by purchasers in connection with the purchase or lease of Chrysler cars at retail.

[fol. 21] Dealer shall mean persons, firms or corporations selling or leasing, or agreeing to sell or lease Chrysler cars at retail.

Purchaser shall mean persons, firms or corporations purchasing or agreeing to purchase Chrysler cars at retail or cash or on deferred payments, or to lease Chrysler cars at retail on the deferred payment plan.

Notes shall mean promissory notes or other obligations made and given by purchasers to dealers as evidence of the

deferred payments owing on the retail purchase or lease price of Chrysler cars when they are sold or leased by dealers to purchasers upon a deferred payment plan.

Term of this policy shall mean the period during which insurance hereunder may become effective, to wit: from July 1st, 1925, to June 30th, 1926, both dates inclusive.

Security instruments shall mean conditional sale contracts, chattel mortgages, leases, bailments, contracts, and/or other instruments reserving or creating title, liens, security or other property interest in Chrysler cars sold at retail to purchasers on a deferred payment plan.

Policy shall mean this contract of insurance.

Certificate shall mean memorandum of insurance under this policy issued or to be issued as herein provided.

Insurance shall mean insurance against the perils insured against in the policy and/or certificate.

## II

### Assured and Coverage

The Insurer does hereby insure Chrysler finance companies, dealers and purchasers as their interests may appear [fol. 22] against loss or damage caused by or arising out of any of the hazards mentioned in the printed part of this policy, to Chrysler cars, provided, however, that the lawful seizure and/or confiscation of any Chrysler car for violation of any liquor or prohibition statute by or with the knowledge or consent of the purchaser, shall terminate the liability thereunder of Insurer as to the purchase or leases of such car, but shall not affect the liability hereunder of Insurer as to other parties.

All banks, trust companies, persons, firms or corporations with or to whom finance companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments shall be protected by this insurance.

Coverage hereunder and under certificates issued hereunder shall be for one hundred per cent (100%) of the list price, F. O. B. Detroit, of each Chrysler car insured hereunder, on the date of purchase or lease of said — by the purchaser, including standard equipment, and any extra equipment and accessories costing in the aggregate not to exceed One hundred dollars (\$100). The limit of liability of

the Insurer for loss or damage to a Chrysler car with standard equipmnt insured hereunder, shall be the total cash value of such car and standard equipment at the time of such loss or damage. The limit of liability of Insurer for loss or damage to extra equipment and accessories insured hereunder, shall be seventy-five per cent (75%) of the actual cash value of such extra equipment and accessories at the time of such loss or damage, in no event to exceed the sum of seventy-five dollars (\$75.00).

Coverage hereunder and under certificates is automatically effective from the date on which (during the term of this policy) each purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, whichever shall be the earlier, and shall extend in respect to such Chrysler [fol. 23] car for a period of twelve (12) months; provided, that in every case where notes and/or security instruments shall have been given in connection with the purchase of any Chrysler car, coverage on such car shall be effective from the date of such notes and/or security instruments.

It is specifically agreed that every Chrysler car sold at retail during the term of this policy, shall be automatically covered hereunder, notwithstanding any failure or omission to issue a certificate or any failure or omission to report the sale of such car as required herein. No act or omission of any beneficiary hereunder shall vitiate or affect the indemnity or coverage of any other party insured hereunder, who is not responsible for such act or omission to act, it being the intent of this policy that only parties responsible for acts or omissions to act shall suffer thereby.

Anything to the contrary herein notwithstanding, it is expressly agreed that no Chrysler car shall be covered hereby which does not, when the purchaser takes delivery of the same or receives a bill of sale thereof, carry a Class A rating for fire insurance by the National Board of Fire Underwriters or which is not continuously equipped with a locking device approved by the Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

Coverage hereunder on any Chrysler car shall not be vitiated or affected because such Chrysler car is operated across the border of the United States and into the territory of the Government of Mexico.

## III

## Certificates

Insurer shall issue certificates to purchasers in the form attached hereto, which certificates and insurance evidenced [fol. 24] thereby, shall not be subject to cancellation by either party. If sales of Chrysler cars are financed there shall be issued at the request of finance companies financing same, duplicates of certificates.

## IV

## Transfers

If any original purchaser shall transfer his interest in a Chrysler car, insured hereunder, and shall mail a notice of such transfer together with his certificate, and \$1.50 to the Insurer at its office No. —, Detroit, Michigan, (said charge being to defray the cost of issuing a new certificate), insurance hereunder shall inure to the benefit of the transferee for the unexpired term originally insured, and Insurer will issue a new certificate for such unexpired term of such transferee; provided, however, that if the sale of the car so transferred has been financed, the consent in writing of any finance company financing the same shall first be obtained to such transfer.

## V

## Excess Insurance

In all cases where Insurer disclaims liability to a purchaser on account of other insurance, coverage hereunder shall be considered as excess insurance, and shall not apply to any loss or damage until amount recoverable from such other insurance shall have been exhausted; if full recovery has not been made within 90 days of a claim for loss from such other insurance of all amounts owing on any note for a Chrysler car, insurer shall advance the amount of its liability hereunder to the insured authorized to receive payment of the loss or damage as a loan without interest, the repayment of which shall be conditioned upon and



be required to be made only to the extent of any recovery from such other insurance.

In all cases where Insurer disclaims liability to a purchaser, Insurer may pay the amount of its liability hereunder to the party authorized to receive the same, other than purchaser, as a loan without interest, instead of as payment of a loss, the repayment of which loan to the Insurer shall be conditioned upon and be required to be made only to the extent of any recovery from the purchaser by the party to whom such loan has been made by the Insurer. If any action is brought against purchaser at the request of Insurer, Insurer shall pay all attorney fees, expenses and costs in such action.

## VI

### Disclaimer of Liability by Insurer

If any claim or legal action be made or commenced against Chrysler, or any finance company, by purchaser, arising out of the refusal of insurer to pay any loss under this policy, or a certificate issued hereunder, Insurer shall defend against such claim or action and pay all attorney fees, costs and expenses incurred and/or judgments recovered in any such claim or action.

## VII

### Reports

Commencing with the 15th day of August, 1925, and on the 15th day of each calendar month thereafter until and including July, 1926, Chrysler shall send a monthly report to the Insurer at Detroit, Michigan, of all cars insurance with respect to which is hereunder contemplated and provided for. Such reports shall show separately the number of all Chrysler four-cylinder cars open and closed, Chrysler six-cylinder cars open and closed, commercial chassis and commercial cars with bodies with serial and motor numbers respectively thereof. The report of August 15, 1925, shall show the cars in possession of or in transit to distributors and/or dealers in the United States on July 1, 1925, and cars thereafter shipped during the month ending July 31, 1925. Subsequent reports shall show ship-

ments to distributors and/or dealers in the United States during the calendar month preceding the month in which the report is sent.

Chrysler further agrees to submit such other information as Insurer may from time to time reasonably require regarding Chrysler cars that are or may be covered by insurance hereunder and to permit Insurer from time to time to check its records against Chrysler records in regard to such Chrysler cars.

## VIII

### Premiums

Agreed premiums are to be paid by Chrysler to Insurer through Alexander & Alexander, Inc., General Agents, at —, Detroit, Michigan, for insurance hereunder on or before the 15th day of each month beginning August 15, 1925, and ending July 15, 1926, for all Chrysler cars reported by its distributors and dealers as sold and/or leased during the preceding calendar month and insured hereunder.

Such reports shall be accompanied by an itemized statement.

## IX

### Payment of Losses

Payment of all losses claimed hereunder shall be made to purchaser unless the purchase of a car with respect to which claim is made, has been financed in which case payment of the loss shall be made to any finance company, dis-[fol. 27] tributor or dealer financing the same, for account of all parties as their respective interest may appear.

## X

### Examination

All parties insured hereunder shall submit to examination under oath by any person named by Insurer as often as shall be required and shall subscribe to same and shall produce for examination all books of account, bills, notes, or other records, or certified copies thereof if the originals cannot be found, in respect to any matters pertaining to coverage of any Chrysler car hereunder at such reasonable

place as may be designated by Insurer or its representatives and to permit extracts and copies thereof to be made.

## XI

### Replacements

If Insurer should so elect Chrysler will sell to Insurer new Chrysler cars at the wholesale list price F. O. B. Detroit on date of loss to replace any similar Chrysler car as to which there has been filed with the Insurer a claim for total loss under this policy and/or certificate issued hereunder.

## XII

### Recording

The recording or filing of security instruments shall not be required by Insurer but shall be optional with the finance company interested and/or holders, and/or owners of such security instruments.

## XIII

### Cancellation

This policy and certificates are not subject to cancellation [fol. 28] by Insurer or by any of the insured; this policy shall terminate June 30, 1926, unless previously renewed by mutual agreement; provided, however, that coverage under certificates issued hereunder at any time during the term of this policy shall be and remain in full force as to all parties concerned until the expiration dates named in such certificates.

## XIV

### Qualified Company

Insurer warrants that it is qualified to do business in the State of Michigan, and that this policy is so executed and all certificates thereunder shall be so issued as to comply with and conform to all laws State or Federal at any time applicable, and agrees to do all things which may be necessary to do, in order to comply with said laws and to carry

out the terms, provisions and purposes of this policy and of certificates issued hereunder, it being expressly understood that it is one of the purposes of this policy that Insurer shall issue certificates of insurance hereunder with respect to every Chrysler car sold at retail throughout the United States during the term of this policy.

## XV

### Michigan Law and Acceptance

This policy and the certificates issued hereunder are to be construed in accordance with and governed by the laws of the state of Michigan, and acceptance of this policy by Chrysler at Detroit, Michigan, shall put the same in full force and effect with respect to all parties covered hereunder or under any certificate issued hereunder.

Palmetto Fire Insurance Co., by Edwin J. Carter,  
Agent.

Approved and accepted by P. Moses, President Palmetto Fire Insurance Co.

[fol. 29] It is understood and agreed that Policy No. A9657 executed the 4th day of August, 1925, by the Palmetto Insurance Company shall take the place of and be substituted for Policy No. A-9652, executed on or about the 16th day of June 1925, which is hereby abrogated.

Certificate issued under said Policy A-9652 shall be considered as issued under this policy and be governed by the terms hereof.

Executed at Detroit, Michigan, this 4th day of August, 1925.

Chrysler Sales Corporation, by (S.) H. A. Davies,  
Asst. Treas. Palmetto Fire Insurance Company,  
by (S.) Edwin J. Carter, Agent.

The above contract is consented to by us.

Commercial Credit Company, by A. E. Duncan.

[fol. 30]

## Form of Certificate

No. —

## Purchaser's Original Copy

Non-valued Fire, Theft, & Transportation Automobile  
Form

This is to certify that under policy No. A 9657 of the Palmetto Fire Insurance Company of Sumter, South Carolina, issued to Chrysler Sales Corporation, covering for account of whom it may concern, the new Chrysler Passenger or Commercial car, sold or leased and delivered to (Name of purchaser:) — —, (Address:) No. —, (Street:) —, (City:) —, (State:) —, and described as follows: Year: —; Model, —; type of body (if truck, state tonnage): —; factory or serial No. —; motor No.: —, is insured against direct loss or damage from the perils insured against to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and/or while in Canada and/or in Mexico, including while in building, on road, on railroad car or other conveyance, ferry or inland steamer, or coastwise steamer between ports within said limits, for the period beginning at noon — and ending at noon —, standard time, for a sum not exceeding — dollars (\$—), being list price including all standard factory equipment F. O. B. Detroit, Michigan, subject to all the conditions, stipulations, provisions, exclusions and warranties set forth in said policy or which appear hereon.

The interest of the Chrysler Sales Corporation, and/or of purchasers, owners, dealers, finance companies, banks, trust companies, persons, firms or corporations or others having an insurable interest in said automobile are protected under this insurance with the same force and effect as if they severally accepted same, and the existence of all such interests is permitted.

Loss, if any, to be adjusted with purchaser, though to be paid subject to all conditions of this certificate only to

(Name:) — —, (Address:) — —, for account of all interests.

This insurance does not in any event cover loss or damage by confiscation of said car while used in violation of any liquor or prohibition statute.

The insurance hereunder shall be considered as excess insurance in the event of any other insurance covering the hazards hereunder insured and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted.

It is a consideration of this insurance that the within described automobile shall be continuously equipped with locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

This insurance is not subject to cancellation.

Anything herein contained to the contrary notwithstanding this insurance shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which the automobile is used (except the unlawful transportation of liquor) nor by the nature of the assured's occupation or business, nor by the location where the automobile is kept.

This insurance may be transferred by the original holder of this certificate, mailing notice of such transfer together with this certificate and \$1.50 to insurer, said insurance continuing for the unexpired term originally insured, protecting the transferee's interest, providing consent in writing of any company financing the same shall first have been obtained to such transfer.

This certificate shall not be valid until countersigned by duly authorized agent at Detroit, Michigan.

Countersigned at Detroit, Mich., (Date:) — —,  
— — by (Agent:) — —.

Provisions Required to be Stated by Law

[fol. 31]

Form of Certificate

The policy under which this certificate is issued is subject to the following conditions:

### Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever, and lightning.

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

### Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies;

#### War, Riot, etc.:

(b) Loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto.

### Title and Ownership

(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership, or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the As-

sured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

### Conditions

Limitation of Liability and Method of Determining Same.—This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly with proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which a bailee may be liable and which would otherwise be covered [fol. 32] hereunder, this Company will advance to the Assured by way of loan of money equivalent of such loss or



damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required,

shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the County and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss of damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by parties equally.

**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required [fols. 33 & 33a] have been received by this Company, and if appraisal is demanded, then not until sixty days after an award has been made by the appraisers.

**Subrogation.**—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

**Suit Against Company.**—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commenced within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the law of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

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[fol. 34] Summons and marshal's return omitted in printing.

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[fol. 35] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR HEARING AND MOTION FOR TEMPORARY  
RESTRAINING ORDER—Filed September 3, 1925

To the Honorable the Judge of the District Court for the  
District of Maine:

Now comes plaintiff above named and makes this, its application for a hearing in this cause for an interlocutory injunction in accordance with Section 266 of the Judicial Code of the United States, as amended by the Act of Congress

approved March 14, 1913; and plaintiff further files this, its motion for the issue of a temporary restraining order to remain in force until the application for said interlocutory injunction can be heard and determined, for the reasons and on the grounds set forth in its Bill of Complaint, and to prevent irreparable loss and damage to plaintiff.

Andrews, Nelson & Gardner, Solicitors for Plaintiff.  
Larkin, Rathbone & Perry, of Counsel.

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[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE—Filed September 8, 1925

Plaintiff having applied for a temporary injunction restraining defendant as prayed in the duly verified bill of complaint and it appearing that such injunction, if granted, may suspend or restrain the enforcement of a state law by restraining the action of a state officer, on the ground of the unconstitutionality of said statutes, if such statutes should be construed as claimed by defendant, and if said statutes prohibit the acts and practices of plaintiff and customers of plaintiff as set out in said complaint, and it appearing from specific facts alleged in said verified bill that immediate and irreparable loss and damage will result to applicant, the plaintiff herein, before the matter can be heard on notice, and it appearing from said complaint that plaintiff is prima facie entitled to interlocutory injunction as prayed, and it further appearing that the defendant is issuing declarations and statements to the effect that plaintiff and plaintiff's customers are violating the criminal and civil laws of Maine and are subjecting themselves to heavy fines, forfeitures and penalties; and that said defendant is threatening to immediately cause the arrest and prosecution of plaintiff and other distributors and dealers selling Chrysler cars in Maine and that said declarations, statements and threats have already had serious effect on, and are causing irreparable injury to plaintiff's property and business, and [fol. 37] that such arrests and prosecution would cause irreparable injury to plaintiff and plaintiff's property be-

fore any hearing on notice can be had in this matter by causing great loss of customers, dealers and good will and disruption of sales organization.

Now, therefore, on motion of plaintiff, it is ordered, that defendant appear on Sept. 15th, 1925, at 11 o'clock A. M., or as soon thereafter as counsel can be heard, or at such other times as may hereafter be duly set as the time for the hearing of said application, at the court room of the above named court, in Portland, Maine, and there show cause why the interlocutory injunction in said bill of complaint prayed for should not issue, and I hereby call to my assistance to hear and determine the application, two other judges, to-wit: Hon. Chas. F. Johnson, Circuit Judge, and Hon. Clarence Hale, District Judge.

Further ordered, that a copy of the Bill of Complaint be served on defendant at the time of the service of this order.

Further ordered, that at least five days' notice of said hearing on application for temporary injunction be given to the Governor and to the Attorney General of the State of Maine and to the defendant in this action.

John A. Peters, U. S. District Judge.

3 Sept. 1925.

[fol. 38] UNITED STATES OF AMERICA,

District of Maine,

Southern Division, ss:

UTTERBACK-GLEASON COMPANY, Plaintiff,

vs.

WILBUR D. SPENCER, Insurance Commissioner of the State  
of Maine, Defendant

September 4, 1925.

I have this day made service of the within Order of Court, upon Wilbur D. Spencer, Insurance Commissioner of the State of Maine, Defendant in the above entitled cause, by delivering to him in hand, at Augusta in said District, a true and attested copy hereof. And, at the same time, I delivered to him in hand a copy of the Bill of Complaint, as within directed.

And, on the same day, I made service of the within Order of Court upon Ralph O. Brewster, Governor of the State of

Maine, by delivering to him in hand, at Augusta in said District, a true and attested copy hereof.

And, on the same day, I made service upon Raymond Fellows, Attorney General of the State of Maine, by delivering in hand to Sanford L. Fogg, Deputy Attorney General of the State of Maine, at Augusta in said District, a true and attested copy hereof.

Burton Smith, Deputy U. S. Marshal, District of Maine.

Fees:

Services, 4	\$8 00
Copies, 3 at 50¢	1 50
	<hr/>
	\$9 50

Sept. 4, 1925.

On behalf of the Attorney General of the State of Maine I hereby acknowledge receipt of an attested copy of an order of the U. S. District Court for the District of Maine, Southern Division, to appear for hearing Sept. 15, 1925, at Portland at 11 A. M. in the case of Utterback-Gleason Company vs. Wilbur D. Spencer, Insurance Commissioner of the State of Maine.

Sanford L. Fogg, Deputy Attorney General of the State of Maine.

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING APPLICATION FOR INTERLOCUTORY INJUNCTION—January 4, 1926

This day this cause came on to be heard before the Honorable Charles F. Johnson, Circuit Judge, the Honorable Clarence Hale, District Judge, and the Honorable John A. Peters, District Judge, sitting as a statutory court as required by the provisions of Section 266 of the Federal Judicial Code, on the application of the plaintiff for an interlocutory injunction and upon verified bill of complaint

and the arguments of counsel, and was submitted to the court.

And the court being fully advised in the premises, find that the complainant is not entitled to the interlocutory injunction prayed for in its bill of complaint.

It is, therefore, ordered and decreed that the application of the plaintiff for an interlocutory injunction herein be and the same is hereby refused and denied.

January 4, 1926.

Charles F. Johnson, U. S. Circuit Judge. John A. Peters, U. S. District Judge. Clarence Hale, U. S. District Judge.

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[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—December 19th, 1925

HALE, J.:

In *Mo. 881*, the plaintiff, a Michigan corporation, engaged in the business of selling automobiles, known as Chrysler cars, at wholesale to dealers in Maine and in other States, seeks to enjoin the defendant from bringing any prosecutions or proceedings for the recovery of penalties, or any civil actions, against the plaintiff or any dealers in its cars,—such dealers acting under the terms of certain alleged contracts of insurance between plaintiff and Palmetto Fire Insurance Company,—and from interfering with plaintiff's business in Maine, and from declaring or publishing any statement that plaintiff, or any one of its dealers in Maine, is violating any law of the State of Maine, regulating insurance business in Maine.

[fol. 41] In *No. 882*, the Utterback-Gleason Company, a Maine corporation, a dealer in Chrysler cars, and representing all dealers in Chrysler cars similarly situated in Maine, prays for a similar injunction against the defendant.

The plaintiffs in both cases aver that the Maine Statutes relating to the regulation of insurance in Maine do not apply to the conditions set forth by the plaintiff; and, if

they do, they are unconstitutional under the due process clause of the Fourteenth Amendment to the Constitution of the United States, and as undertaking to regulate interstate commerce and as impairing freedom of contract. The case is heard by a Court constituted under Section 266 of the Judicial Code.

In No. 881 the bill in equity alleges that the Chrysler Sales Corporation is a Michigan corporation engaged in buying and selling the entire output of Chrysler cars, now manufactured by a certain company called The Chrysler Corporation, organized in Delaware and having its factories in Michigan; that it sells its automobiles to dealers in Maine and in other States, and in other countries; that such dealers resell the cars to purchasers in the several States and countries; and that thereby they are selling and causing to be shipped articles in interstate commerce; that the articles so sold by the plaintiff are known as Chrysler cars; that they enjoy a favorable reputation with the public and are sold in rapidly increasing numbers; that the plaintiff has met with large success and does a large business at great cost; that at present there are more than three thousand such dealers in the several States selling Chrysler cars, and more than twenty-six such dealers in Maine; and that the sales of such dealers in Maine during the first half of the year 1925 exceeded two hundred thousand dollars.

That more than eighty per cent of automobiles sold to the American public are sold under plans whereby the purchasers at retail pay only part of the purchase price when they take delivery of the cars, and are given credit for the balance, made payable in installments. That it is the practice of dealers, who are not generally persons of large means, to assure themselves before selling the cars on time, of the services of some banking or finance company, which [fol. 42] agrees to purchase from them or to discount notes for them. Such finance companies are obliged to maintain organization to collect the payments for the cars and to watch that such cars are not disposed of before they are paid for; such companies always require that insurance against the perils of fire and theft be required in respect to the cars which they finance; that the charges for such financing, together with the cost of insurance and the interest on the unpaid balance of the purchase price have always



been paid by the retail purchasers of cars sold on time payment plan; that such charges have not been uniform, and have generally been high, and that, by all such charges, the price paid by the ultimate purchaser of the cars has been increased.

That plaintiff is now seeking to make arrangements to secure a uniform and moderate financing charge on all Chrysler cars; and that, in order to accomplish this, it has found it necessary to provide for uniform insurance protection on all Chrysler cars; that, to effect this, plaintiff is seeking to secure such insurance at a moderate cost by an open contract or policy of insurance made and to be performed, as it alleges, in Michigan, covering every Chrysler car against fire and theft for one year after date of purchase at retail for an amount not to exceed the factory list price; that, by such policy, adequate protection for every retail buyer of a Chrysler car may be provided. That uniform insurance is thus arranged, and a moderate and uniform financing system is made available for all sales of Chrysler cars on the installment plan; and that thereby the value of the Chrysler product is increased and a substantial saving is made; that, by such insurance, automatic protection for every retail buyer of the Chrysler cars and for any other parties having an interest therein or lien thereon can be obtained; and, uniform insurance being thus arranged, a moderate and uniform financing charge may be made available for all sales of Chrysler cars on the installment plan; and thereby the value of the Chrysler car to the ultimate buyer may be increased, and a real and very large saving made.

[fol. 43] That, having these facts in view, on or about June 16th, 1925, plaintiff duly executed, in the State of Michigan, a contract, or policy, of insurance with the Palmetto Fire Insurance Company, a South Carolina corporation, licensed to conduct business in Michigan, and having a general agency there, but not licensed to do business in Maine and not maintaining any agency in Maine; that this contract made with the Palmetto was to be performed in the State of Michigan, and that the Palmetto undertook to insure all Chrysler automobiles sold in the United States at retail, during the term of the policy, against fire and theft for one year from the date of sale, the insurance

being granted pursuant to the terms of the contract of insurance; that the original contract has been amended, and a copy of the policy now in use is made a part of the bill. It is called an open policy. Its term is for one year from July 1, 1925, covering against loss by fire or theft all Chrysler cars sold in the United States during the policy year. Under its term the insurer is to issue a certificate in the name of the plaintiff for the account of whom it may concern whenever a car is reported sold at retail. The form of the certificate is made part of the bill. The policy is to provide that omission to report the sale of a car or to issue a certificate in respect thereto shall not prevent the retail buyer of the car from being protected under the policy.

The bill alleges that only the plaintiff pays, or is liable to pay, to the insurance company the premium of the policy; that the premium is paid in Michigan and that the policy is kept in Michigan; and certificates are mailed by the insurance company from Michigan to the retail purchaser, that, when the retail sale of a car is made, the purchaser is protected by the Michigan contract of insurance that, whether the car is sold for cash or on time, the price is the same, except for a charge of eight per cent on any unpaid balance, if the car is sold on time; that no purchaser can obtain his car at a less price, whether or not he desires the protection of such insurance; that if cash purchasers desire other insurance, such insurance shall be merely excess insurance. When a sale is made the retail dealer reports to the Sales Company the name of the purchaser, the date of the sale, motor number, style and all necessary details, and plaintiff [fol. 44] notifies the agent of the insurance company in Michigan who mails the certificate of insurance from his office in Detroit to the purchaser, and counterparts of it to others who to his knowledge may have an interest in the car.

Plaintiff says that it is now, as aforesaid, selling large numbers of its cars in Maine to retail purchasers, on the above general plan; and it complains that the defendant, acting as Insurance Commissioner of the State, has announced to the public that, so far as insurance in the name of purchasers is effected, such sales of Chrysler cars are contrary to the laws of the State of Maine; and that the Chrysler dealer, in so selling cars in Maine, is violating

certain statutes of Maine; and it complains further that defendant is threatening to procure the arrest of dealers in Chrysler cars who are selling cars in Maine under the arrangement by which insurance is effected on the same. The plaintiffs in both cases assert that the dealers are in no sense agents within the meaning of the Revised Statutes of Maine; that they take no part in placing the contract of insurance; that the dealer cannot separate the premium from the cost of the car; that if the Maine Statutes brought in question are properly construed, they have no application; and, if construed to apply, they are violating the Federal Constitution.

Section 121 of Chapter 53 of the Revised Statutes of Maine, as amended by Chapter 25 of the Public Laws of Maine for 1917, is as follows:

"Sec. 121. Penalty for Soliciting Applications Without License Increased.—The insurance commissioner may issue a license to any person to act as an agent of a domestic insurance company, upon his filing with the commissioner a certificate from the company or association, or its authorized agent, empowering him to so act; and to any resident of the state to act as an agent of any foreign insurance company, which has received a license to do business in the State as provided in section one hundred and five or section one hundred and fifty upon his filing such certificate. Such license shall continue until the first day of next July. If any person solicits, receives or forwards any risk or application for insurance to any company, without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums, he shall be punished by a fine not exceeding two hundred dollars, or imprisonment not exceeding sixty days, for each offense; but any policy issued on such application binds the company if otherwise valid. Agents of duly authorized insurance companies may place risks with agents of other duly authorized insurance companies when necessary for the adequate insurance of property, persons or interests. An insurance agent shall be personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for or in behalf of any company not authorized to do business in the state. Nothing herein contained [fol. 45] shall require a duly licensed insurance agent or

broker to obtain any license for an employee doing only clerical work in the office of said agent or broker."

Plaintiffs say that on one of the provisions and inhibitions of this statute applies to any of the acts of the Sales Corporation or its twenty-six dealers—or more—in Maine. It contends that its contract is a contract of insurance, made and completed in Michigan and requiring no act to be done in Maine to effect its completion; that it takes effect upon a sale of a car at retail; and that, when so sold, the insurance becomes automatically effected, by virtue of the contract. We cannot sustain this contention. The Michigan contract appears to us not to be a completed insurance contract, but an agreement for future insurance. By its terms, the insurance does not become effective until the car is purchased in Maine from the dealer. The purchaser, when he becomes "assured," accepts the insurance and affirmatively states and warrants certain things in the contract to be "warranted by the Assured" to be true. He thereby makes certain distinct and affirmative agreements which become a part of his contract. If he purchased upon the deferred payment plan he arranges with the dealer for someone to finance the payments; and this financial agent becomes a beneficiary. Finally a certificate, the evidence of insurance, is mailed to the purchaser in Maine. In that certificate the purchaser, who has become the insured, "agrees that its terms embody all agreements then existing between himself and the company." The local dealer, we think, when he solicits the sale of the car, solicits also the incidental insurance provided for by the Michigan contract. He selects the beneficiaries; he notifies the Sales Company in Michigan by mail of details essential to the completion of the insurance contract; his acts, together with those of the purchaser, bring the contract into actual existence; and these acts occur in Maine. There is no such meeting of minds as gives life to the contract until the purchaser accepts the car and the insurance from the retail dealer in Maine.

In our opinion, the question is not affected by the fact that the acceptance of the contract is obviously intended to be forced upon the purchaser, the assured, by the fact that

[fol. 46] the first year's insurance is already paid, regardless of whether the purchaser desires the insurance or not.

It is true that the dealer, who is himself the owner of the cars, does not hold himself out affirmatively and formally to be an insurance agent. He is not thinking much about insurance. He is bent on selling his cars. When he sells a car he is clearly making himself an instrument for effecting the insurance of it, although such insurance is incidental and deemed by him to be of little consequence. He effects this insurance in behalf of the Palmetto Company; and he has authority to so effect it. When he reports the sale to the Sales Company at Detroit, giving the name of the purchaser, the date of the sale, the motor number, the style of the car, and all elements required in order to issue an ordinary insurance policy,—and upon which certificate is actually issued—he seems to us to be giving the necessary information for effecting the insurance. In giving such information he is clearly acting for the Insurance Company. Within the meaning of the statute we think he “assumes to be an agent” and “procures risks and receives money for premiums,” even though such premiums are submerged in the term “delivery charges” and other expressions.

It is contended by the learned counsel for the plaintiffs that the Palmetto Company, a South Carolinian corporation, had an undoubted right to make a contract of insurance with a citizen of Maine; that the case is ruled by *Allegier v. Louisiana*, 165 U. S. 578, 587, in which case the point decided was that a statute of a State, punishing the owner of property for obtaining insurance thereon in another State, was unconstitutional. The insurance in that case was not procured by an agent in the State of the assured.

In *Hooper v. California*, 155 U. S. 648, the Court decided that a statute of California, by which Hooper was guilty of procuring insurance for a resident of California from a foreign insurance company which had not given bond as required by the laws of California, was constitutional. The Court upheld the principle that the right of a foreign corporation to engage in business within a State other than that of its creation depends solely upon the will of such other State, and illustrated that principle by a long line of [fol. 47] decisions. The Court decided that the business of

insurance is not commerce; that a contract of insurance is not an instrumentality of commerce; the making of such a contract is a mere incident of commercial intercourse. The Court held that the State of California has the power to exclude foreign insurance companies from its territory, or, if it allows such companies to enter the State, to determine the conditions under which the entry is to be made, and to regulate and enforce all legislation in regard to things done within the territory of the State which may be directly or incidentally requisite in order to render the enforcement of the conceded power efficacious; subject always to the paramount authority of the Constitution of the United States. In *Allgeyer v. Louisiana*, *supra*, the Supreme Court based its decision upon the fact that the contract was made beyond the territory of the State of Louisiana; that nothing whatever was done in that State in relation to the completion of the contract; but that all that was done in that State was the mailing of the letter of notification; and that this was done after the principal contract had been fully effected. It expressly recognized *Hooper v. California*, *supra*, and distinguished it. In speaking for the Supreme Court, Mr. Justice Peckham quoted the language of Mr. Justice White in that case:

“It is said that the right of a citizen to contract for insurance for himself is guaranteed by the Fourteenth Amendment, and that, therefore, he cannot be deprived by the State of the capacity to so contract through an agent. The Fourteenth Amendment, however, does not guarantee the citizen the right to make within his State, either directly or indirectly, a contract, the making whereof is constitutionally forbidden by the State. The proposition that, because a citizen might make such a contract for himself beyond the confines of his State, therefore he might authorize an agent to violate in his behalf the laws of his State, within her own limits, involves a clear non sequitur, and ignores the vital distinction between acts done within and acts done beyond a State’s jurisdiction.”

In *Nutting v. Massachusetts*, 183 U. S., 553, 556, in speaking for the Supreme Court, Mr. Justice Gray said:

“A State has the undoubted power to prohibit foreign insurance companies from making contracts of insurance,

marine or other, within its limits, excepting upon such conditions as the State may prescribe, not interfering with interstate commerce. A contract of marine insurance is not an instrumentality of commerce, but a mere incident of commercial intercourse. The State, having the power to impose conditions on the transaction of business by foreign insurance companies within its limits, has the equal right to prohibit the transaction of such business by agents of such companies, or by insurance brokers, who are to some extent [fol. 48] the representatives of both parties. *Hooper v. California*, 155 U. S., 648; *Allgeyer v. Louisiana*, 165 U. S., 578."

We are of the opinion that the instant case is governed by the principles of the cases we have cited, and especially the *Hooper* case. We think these cases are decisive of the constitutionality of the statute in question and of other statutes found in Chapter 53 of the Revised Statutes of Maine undertaking to regulate insurance within the State. *Allgeyer v. Louisiana*, *supra*, does not, we think, make a path for the plaintiff to escape from the Maine insurance regulations. For, even though the insurance company may not be prevented from making in Michigan an insurance contract with a Maine citizen, it does not follow that such company may be permitted to place an agent in Maine to aid it in effecting such insurance, even though such agent is called a "dealer," and even though his main duty is to promote the sale of automobiles. In making sales of \$200,000 worth of Chrysler cars in the first six months of 1925, it is clear that the twenty-six "dealers" of the Sales Company in Maine promoted and effected a substantial volume of insurance business. Such insurance business the Maine Statutes had a right to regulate.

Questions similar to those raised in the instant case have been passed upon in certain unreported opinions by Courts organized as this Court is organized, under Section 266 of the Judicial Code. In *Palmetto Fire Insurance Company v. James A. Beha*, Superintendent of Insurance for the State of New York, the defendant was enjoined from revoking the license of the Palmetto Fire Insurance Company on the ground, as it appears, that the New York statutes do not prohibit the transactions involved in that case; and that such transactions being valid in Michigan, and not made



valid in New York, no legal cause for the cancellation of the license existed. In some of the conclusions of law, as we understand them, we are not in agreement. In *Palmetto Insurance Company v. Harry L. Conn*, Superintendent of Insurance for the State of Ohio, the Court was called upon to enjoin the revocation of the license of the Palmetto Fire Insurance Company to do business in Ohio. It was held that the statute of that State prohibiting an insurance company [fol. 49] legally authorized to transact business in Ohio from writing, placing or causing to be written or placed, insurance upon property situated in that state—except through a legally authorized agent therein who should countersign all policies and enter the payment of the premium upon his record,—was valid so far as insurance corporations who had taken out licenses were concerned; and that such a license might properly be revoked if the statute was violated. The precise question there passed upon is not involved in the case before us. Neither of the above cases present the facts found in our record. They are not, of course, of binding force as authorities.

In *Chrysler Sales Company vs. W. Stanley Smith*, Commissioner of Insurance for Wisconsin, the Court had before it a case quite similar to the instant case; and we have derived real assistance from the clear opinion of Judge Luse. The statute in question was similar to our statute; the attempt was to enjoin the Insurance Commissioner. Judge Luse discusses a contract and plan substantially like the contract and plan in this case. In speaking for the Court he says:

“One of the important details of this contract and plan is that the effective date of the insurance is postponed until a car is sold at retail, and until title has passed from, not only complainant, but its distributors and dealers, and only takes effect upon a sale at retail and covers only the loss sustained by the retail purchaser and lien claimants whose claims grow out of the transaction of retail sale. When so sold, complainant claims, the insurance becomes automatically effective, by virtue of the Michigan contract. Plainly the theory of complainant is that this insurance is something that attaches to and follows an automobile upon its course in the market, as though a part or accessory, and that the dealer who sells the car has nothing to do with the



insurance item,—he merely sells the car with all its equipment including the insurance. But this idea is erroneous for, at least, two reasons: (1) the Insurance never had effective existence until the sale at retail, by its very terms, or, as it may differently be stated, it is only to be made operative by an act of the retail dealer, and (2) the legal concept of insurance is that in the absence of special circumstances it does not attach to property but to persons. As said by Story, J., in *Carpenter v. Providence Co.*, 16 Peters, 495, 503, quoting Lord Hardwick:

“ ‘The society are to make satisfaction in case of any loss by fire. To whom, or for what loss are they to make satisfaction? Why, to the person injured, and for the loss he may have sustained, for it cannot be properly called insuring the thing, for there is no possibility of doing it, and therefore must mean insuring the person from damage.’ ”

“A similar thought underlies the decision in *Paul v. Virginia*, 8 Wall. 168, wherein Justice Field says, referring to insurance contracts:

“ ‘These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of [fol. 50] trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one state to another and then put up for sale.’ ”

“And this thought has withstood numerous assaults as is indicated in *N. Y. Life Ins. Co. v. Deer Lodge County*, 231 U. S., 495. And so we conclude that the insurance feature of the sales of Chrysler cars in Wisconsin may not be treated as an appendage or bit of equipment of small relative cost, which passes with the transfer of the car, but must be approached as a contract between persons, the insurer and the insured, and in so far as an insurance results it must be viewed as a thing apart and distinct from the cars sold.”

We have quoted quite fully from the opinion in the Wisconsin case because much of its language is apt and fitting to the record in the case at bar.

Judge Luse has shown that a contract of insurance is a personal contract between the insurer and the insured, and

that the minds of both insurer and insured must meet in order to effect such insurance. The Statute of Maine defining an insurance contract is illustrative of this point. Under Chapter 53, Section 1 of the Revised Statutes of Maine, a contract of insurance—life insurance being excepted—is “an agreement by which one party for a consideration promises to pay money or its equivalent, or to do some act of value to the assured, upon the destruction or injury of something in which the other party has an interest.” And it is further provided that such insurance business, involving the use of such contracts, shall be carried on only by duly incorporated insurance companies who have complied with the Maine regulations in regard to insurance.

We have already held that the Michigan contract is not an insurance contract in presenti, but is an agreement that insurance will be effected in future on the sale of a car. This element of personality becomes important in view of the fact that the Michigan contract is in favor of “Chrysler Sales Corporation and/or for account of whom it may concern.” But the personal quality of the contract is not affected by the words “for account of whom it may concern.” The leading case upon this class of policy is *Hooper v. Robinson*, 98 U. S., 528, 536. In speaking for the Supreme Court, Mr. Justice Swayne said:

[fol. 51] “A policy like the one here in question, in the name of a specified party ‘on account of whom it may concern,’ or with other equivalent terms, will be applied to the interest of the persons for whom it was intended by the person who ordered it, provided the latter had the requisite authority from the former, or they subsequently adopted it. 1 Phillips, Ins. Sect. 383.”

*Hagan v. Scottish Insurance Company*, 186 U. S., 423, 430, is also a leading case. In the latter case also “Phillips on Insurance” is cited:

“Sec. 385: The Rule, that an insurance ‘for whom it may concern’ will avail in behalf of the party for whom it is intended, does not mean that any specific individual must be intended. \* \* \* But he may intend it for whatever party shall prove to have an insurable interest in the specified subject, in which case it will be applicable to the inter-

est of any person subsequently ascertained to have such an insurable interest, who adopts the insurance.

"Sec. 388. One may become a party to the insurance effected in his behalf, in terms applicable to his interest, without any previous authority from him, by adopting it, either before or after a loss has taken place and is known to him, though the loss may have happened before the insurance was made."

Open policies of this character have been most frequently found in maritime cases. A ship sails from sea to sea, and in many cases is for years away from its home port. In the meantime its owners are changing, and, in cases of loss, it often becomes difficult to trace the ownership. Courts have said that the contract may be made applicable to the interest of any person ascertained to have an insurable interest who "adopts" the insurance, even though such "adoption" is after the loss.

In the cases which we have cited upon that point the insurance was on a specific ship in one case and on a specific cargo in the other; the thing to which the insurance attached was, therefore, known when the blank policy was made, and the question was who had the insurable interest at the time of loss. In the case at bar there is no specific thing to which the insurance can attach until the "dealer" sells a car to a purchaser, and the purchaser accepts the car, with the insurance, and thereby becomes a party to the contract of insurance. There is, therefore, in the instant case, no question of the purchaser's insurable interest and no necessity of any further "adoption" of the contract. The contract of insurance clearly "concerns" the purchaser of the car.

[fol. 52] On the whole, we are of the opinion that the plaintiffs have not presented a case for an injunction against the defendant.

In view of our having passed upon the contract itself, which constitutes the vitals of the controversy, it is not necessary to discuss the question of jurisdiction. Nor is there any occasion for considering other Maine statutes alleged to have been violated. The motion for a preliminary injunction is denied.

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—January 4, 1926

Utterback-Gleason Company, plaintiff in above entitled action, in which plaintiff's application for temporary injunction was heard in accordance with the provisions of Section 266 Judicial Code and was determined adversely to plaintiff, considering itself aggrieved by the order and decree of the above named court against it, entered on the fourth day of January, 1926, denying the application for an interlocutory injunction in said cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, be sent to the Supreme Court under the rules of said Court in such case made and provided.

Dated this fourth day of January, 1926.

Andrews, Nelson & Gardiner, Attorneys for said  
Petitioner.

The foregoing appeal is allowed.

Dated January 4, 1926.

Charles F. Johnson, U. S. Circuit Judge. John A.  
Peters, U. S. District Judge. Clarence Hale, U. S.  
District Judge.

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—January 4, 1926

Plaintiff in connection with petition for appeal herein presents and files therewith its assignment of errors as to which matters and things it says that the order entered

herein on the fourth day of January 1926, is erroneous, to wit:

First. That the court erred in refusing interlocutory injunction as prayed.

Second. That the court erred in holding that distributors of and dealers in Chrysler automobiles in Maine, including plaintiff and others similarly situated, selling in Maine automobiles the purchasers of which are protected by insurance contract effected in Michigan between the Chrysler Sales Corporation and Palmetto Fire Insurance Company, as set out in complaint, and doing acts incidental to such sales, are violating the penal provisions of Maine Statutes, and particularly Section 121 of Chapter 53 of the Revised Statutes of Maine, as amended by the Public Laws of 1917, Chapter 25.

Third. That the court erred in holding that by virtue of the contract of insurance between Chrysler Sales Corporation and Palmetto Fire Insurance Company made in Michigan and the sale of Chrysler cars in Maine by dealers in and distributors of Chrysler cars in Maine and acts incidental [fol. 55] thereto, as set out in complaint, said Palmetto Fire Insurance Company is transacting an insurance business in Maine, and in not holding that Section 57 of Chapter 9 of the Maine Revised Statutes, purporting to levy a tax on premiums paid on unauthorized insurance contracts covering property in Maine, is invalid and in violation of the Constitution of the United States.

Fourth. That the court erred in holding that dealers in and distributors of Chrysler cars in Maine are agents of and for the Palmetto Fire Insurance Company in respect to business of that company transacted in the State of Maine.

Fifth. That the court erred in refusing to hold that Section 121 of Chapter 53 of the Maine Revised Statutes, as amended by the Public Laws of 1917, Chapter 25, has no application to dealers in and distributors of Chrysler automobiles in Maine, including plaintiff and others similarly situated as described in complaint.

Sixth. That the court erred in refusing to hold that Section 122 of Chapter 53 of the Revised Statutes of Maine, as

amended by Chapter 25 of the Public Laws of 1917, has no application to dealers in and distributors of Chrysler automobiles in Maine, including plaintiff and others similarly situated as described in complaint.

Seventh. That the court erred in refusing to hold that Section 129 of Chapter 53 of the Revised Statutes of Maine has no application to dealers in and distributors of Chrysler automobiles in Maine, including plaintiff and others similarly situated as described in complaint.

Eighth. That the court erred in holding that by virtue of the acts and transactions of dealers in and distributors of Chrysler cars in Maine (including plaintiff and others similarly situated) described in complaint, and contract made in Michigan between Chrysler Sales Corporation and [fol. 56] Palmetto Fire Insurance Company, and the operation of said contract, said Palmetto Fire Insurance Company is unlawfully transacting an insurance business in Maine.

Ninth. That the court erred in refusing to hold that the dealers in and distributors of Chrysler cars in Maine, including plaintiff and others similarly situated, are not violating any law of Maine, and that there is no Maine law sanctioning or supporting the prosecutions or actions against such dealers and distributors threatened by defendant.

Tenth. That the court erred in holding that the threatened acts of defendant, Wilbur D. Spencer, are supported and sanctioned by law, and in refusing to hold that said threatened acts and proceedings are not supported by law but are contrary to law and beyond the power of defendant and threaten to cause irreparable injury and damage to plaintiff and others similarly situated.

Eleventh. That the court erred in holding that Section 121 of Chapter 53 of the Revised Statutes of Maine, as amended by Chapter 25 of the Public Laws of 1917, construed as prohibiting the acts of Chrysler dealers and distributors, as set out in the complaint, is a valid law and does not violate any provision of the Constitution of the United States.

Twelfth. That the court erred in refusing to hold that the Statutes of the State of Maine in so far as they may be construed as prohibiting or penalizing the acts of dealers in and distributors of Chrysler cars in Maine are invalid as in violation of the Constitution of the United States, in that such statutes so construed take the property of said dealers and distributors without due process of law and take the property of the plaintiff herein, and others similarly situated, without due process of law and deny to said dealers and distributors including plaintiff the equal protection of the law and prohibit the sale of plaintiff's property by [fol. 57] itself and other independent dealers in Maine by virtue of the fact that the Chrysler Sales Corporation has effected in Michigan a contract of insurance protecting and benefitting all retail purchasers of Chrysler cars, thus attempting to penalize the making of a contract of insurance outside the state of Maine and to lay a burden thereon and because said statutes so construed destroy and take away without due process the liberty of contract of said dealers and distributors, including plaintiff and others similarly situated, to the prejudice and destruction of plaintiff's business, and because said statutes so construed violate the 14th Amendment to the Constitution of the United States, and also Article IV, Section 1 and Article I, Section 10 of said Constitution of the United States.

Thirteenth. That the court erred in refusing to hold that the threatened acts of the defendant would deprive the plaintiff of its property without due process of law and deny plaintiff the equal protection of the law in violation of the 14th Amendment to the Constitution of the United States.

Fourteenth. That the court erred in refusing to hold that in so far as Maine statutes are construed as prohibiting the acts of Chrysler distributors and dealers in Maine, including plaintiff, they impose a burden and prohibition on interstate commerce contrary to the Constitution of the United States.

Wherefore plaintiff prays that the order and decree may be reversed and that plaintiff may have an adjudication and decree in its favor.

Dated this fourth day of January, 1926.

Andrews, Nelson & Gardiner, Attorneys for Plaintiff.

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[fols. 58 & 59] Bond on appeal for \$500.00 approved; omitted in printing.

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[fol. 60] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—January 4, 1926

Utterback-Gleason Company, plaintiff above named having filed its petition for an appeal herein and therewith its assignment of errors, now on motion of Andrews, Nelson & Gardiner, attorneys and solicitors for plaintiff, in term time and at the same term of the order and decree below mentioned, it is ordered that the appeal of said plaintiff, Utterback-Gleason Company, from the interlocutory order and decree of this court heretofore filed and entered herein on the fourth day of January, 1926, be and it hereby is allowed, as prayed for, the amount of the appeal bond on said appeal being hereby fixed at the sum of Five Hundred Dollars with surety to be approved by the court or judge thereof or clerk thereof.

And it now appearing that the appellant has executed its appeal bond in the said sum of Five Hundred Dollars with Fidelity and Deposit Company of Maryland as surety thereon and has presented the same for approval, said bond and surety are now hereby approved.

Dated January 4, 1926.

Charles F. Johnson, U. S. Circuit Judge. John A. Peters, U. S. District Judge. Clarence Hale, U. S. District Judge.



[fol. 61] Citation in usual form showing service on Raymond Fellows and Sanford L. Fogg, omitted in printing.

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[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRECIPE FOR TRANSCRIPT OF RECORD

To the clerk of the above-named court:

Please make up and certify the record in this cause to be transmitted to the Supreme Court of the United States on the appeal of the Utterback-Gleason Company and include in said record the following:

- (1) Petition for appeal on said appeal.
- (2) The assignment of errors on said appeal.
- (3) The bond on said appeal and approval at foot thereof.
- (4) The order allowing said appeal.
- (5) The citation on appeal and admission of service thereof and notice of said appeal.
- (6) The precipe for the transcript on said appeal.
- (7) The verified bill of complaint filed in this case, including exhibit attached thereto.
- (8) The application for hearing under Section 266, Judicial Code, and motion for temporary restraining order filed September 3, 1925.
- (9) The order to appear for hearing September 15, 1925 with record of service of same upon the defendant, the Governor of the State of Maine and the Attorney General of the State of Maine.
- (10) The order of the court of January 4, 1926 denying applications for temporary injunction, together with a copy [fol. 63] of the opinion rendered in the case of the Chrysler Sales Corporation vs. Wilbur D. Spencer, Insurance Commissioner of the State of Maine.
- (11) Clerk's certificate authenticating the record.

Dated January 5, 1926.

Andrews, Nelson & Gardiner, Attorneys for Utterback-Gleason Company, Appellant.

Augusta, Maine, January 5, 1926.

Seen and agreed to. Notice of filing acknowledged.  
Raymond Fellows, Attorney General. Sanford L.  
Fogg, Deputy Attorney General, Attorneys for  
Wilbur D. Spencer, Insurance Commissioner of  
the State of Maine, Defendant and Appellee.

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[fol. 64] Citation and service omitted; printed side page  
61, ante.

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[fol. 65] Clerk's certificate to foregoing transcript omit-  
ted in printing.

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[fol. 66] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION  
BY APPELLANT OF PARTS OF THE RECORD TO BE PRINTED—  
Filed February 3, 1926.

To the clerk of the above-entitled court:

Now comes the apellant, Utterback-Gleason Company,  
and in pursuance of Rule 11, Subdivision 9 of the Rules  
of the United States Supreme Court, states that the points  
on which it intends to rely are:

1. That the plaintiff in justice and in equity is entitled  
to an interlocutory injunction.

2. That the various statutes of the State of Maine which  
this plaintiff is purported to have violated are not applica-  
ble to this plaintiff and to those similarly situated.

3. If said statutes be construed to be applicable to the  
plaintiff and to those similarly situated, then those statutes  
are contrary to the Constitution of the United States and  
void.

4. The plaintiff further intends to rely as a statement of  
its points on all the assignments of error filed in the court  
and appearing in the Transcript of Record here.

That it will be necessary for the consideration of these points to incorporate in the transcript in this appeal, the following:

[fol. 67] The entire record as certified to this court by the Clerk of the District Court of the United States, for the District of Maine, Southern Division.

Nicholas Kelley, Solicitor for Plaintiff.

Dated Portland, Maine, February 2, 1926.

[fol. 68] [File endorsement omitted.]

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Endorsed on cover: File No. 31,627. Maine D. C. U. S. Term No. 904. Utterback-Gleason Company, appellant, vs. Wilbur D. Spencer, insurance commissioner of the State of Maine. Filed January 21st, 1926. File No. 31,627.

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, [REDACTED] 1926**

**No. [REDACTED] 286**

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**CLARK MOTOR COMPANY, APPELLANT,**

**vs.**

**W. STANLEY SMITH, COMMISSIONER OF INSUR-  
ANCE OF THE STATE OF WISCONSIN**

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**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF WISCONSIN**

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**FILED FEBRUARY 1, 1926**

**(31,680)**



(31,660)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 937

CLARK MOTOR COMPANY, APPELLANT,

*vs.*

W. STANLEY SMITH, COMMISSIONER OF INSUR-  
ANCE OF THE STATE OF WISCONSIN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF WISCONSIN

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[(Caption omitted)]

[fols. 3 & 3½] **IN UNITED STATES DISTRICT COURT,  
WESTERN DISTRICT OF WISCONSIN**

In Equity

CLARK MOTOR COMPANY, Plaintiff,

vs.

W. STANLEY SMITH, Commissioner of Insurance of the State  
of Wisconsin, Defendant

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed  
December 16, 1925

Clark Motor Company, plaintiff in above entitled action, in which plaintiff's application for temporary injunction was heard in accordance with the provisions of Section 266 Judicial Code and was determined adversely to plaintiff, considering itself aggrieved by the order and decree of the above named court against it entered on the 18th day of November, 1925 denying the application for an interlocutory injunction in said cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, be sent to the Supreme Court under the rules of said Court in such case made and provided.

Dated this 15th day of December, 1925.

Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toe-  
baas, Attorneys for said Petitioner.

The foregoing appeal is allowed.

Dated December 16, 1925.

C. Z. Luse, District Judge.

[File endorsement omitted.]



Due service of within appeal admitted this 16th day of December, 1925.

Herman L. Ekern, by T. L. McIntosh, Attorneys for Defendant.

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[fols. 4-5½] Bond on appeal for \$500.00; approved and filed December 16, 1925; omitted in printing.

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[fols. 6-8½] Præcipe for transcript of record, with service, omitted in printing.

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[fol. 9] IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT—Filed August 3, 1925

To the Honorable the Judge of the District Court for the Western District of Wisconsin:

The plaintiff above named for its bill of complaint herein respectfully shows to this Honorable Court:

(1) Plaintiff, Clark Motor Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, and its principal office and place of business is located in the city of Milwaukee, County of Milwaukee, and State of Wisconsin; and said corporation is a citizen of said State of Wisconsin.

(2) Defendant, W. Stanley Smith is the duly appointed, qualified and acting Commissioner of Insurance of the State of Wisconsin, and is a citizen and resident of the State of Wisconsin, and of the Western District of Wisconsin.

(3) The ground upon which the jurisdiction of this Court depends is that this action arises under the constitution and laws of the United States.

[fol. 10] (4) The matter in controversy exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars (\$3,000).

(5) Plaintiff is engaged in the business of buying from the Chrysler Sales Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Michigan, Chrysler cars and parts for same and selling the same at wholesale to dealers in Milwaukee and surrounding territory in Wisconsin, and also at retail to buyers of automobiles in said territory. Said Chrysler Sales Corporation has its principal place of business in Detroit, Michigan and buys the entire output of Chrysler cars from the Chrysler Corporation and resells same to distributors such as plaintiff in this action, said distributors being very numerous and located and doing business in all parts of the United States. The automobiles manufactured by said Chrysler Corporation and so sold by plaintiff are known as Chrysler cars, enjoy a favorable reputation with the Wisconsin public and have been and are being purchased by said public in rapidly increasing numbers. Plaintiff buying direct from the Chrysler Sales Corporation is known as a distributor and dealers who buy from plaintiff and sell only at retail are known as dealers. Such dealers who buy from plaintiff are not employed by plaintiff or the Chrysler Sales Corporation but are customers of plaintiff. Said dealers who buy from plaintiff are numerous and the retention of their business is of great value to plaintiff and its loss or impairment would cause great financial loss to plaintiff greatly exceeding \$100,000. The extent of such loss could not be measured nor be compensated by damages. Plaintiff has expended large sums of money and much time and service in securing said dealers [fol. 11] who buy Chrysler cars from plaintiff and sell to the public in said territory. Plaintiff has acquired and built up a valuable business with said dealers which is a very valuable property right and is dependent on the retention of said dealers as customers and on the retention of the good will of said dealers and on giving satisfaction to the buying public.

(6) A very large percentage of automobiles of all makes sold to the American public are and for a considerable period of time have been sold under plans whereby the purchasers at retail pay only part of the purchase price at the time of taking delivery of the car and are given credit for the balance which is usually made payable in installments.

Ordinarily distributors and dealers have not sufficient capital to enable them to hold themselves the evidences of the unpaid balances due upon the automobiles thus sold on credit. It is the common practice for the distributors and dealers before selling cars on time to assure themselves of the services of a bank or finance company which agrees to purchase from them or to discount for them the notes, or other evidences of the balances due. The banks or finance companies rendering such services are obliged to maintain organizations to collect the payments when they are due and to watch that the cars are not improperly disposed of before they are paid for. They always require that insurance against the perils of fire and theft be effected in respect to the cars which they finance. In order to cover the expenses of collecting the instalments and of guarding against the making away with cars before full payment of the instalments the finance companies have made substantial charges. These charges together with the cost of insurance and the interest on the unpaid balance of the purchase price, have always been paid by the retail purchasers of automobiles on time payment plan. The [fol. 12] charges of finance companies have not been uniform and have been generally high. The placing of insurance has been largely controlled by finance companies and the insurance business has been rapidly getting away from local insurance agents. In many instances local dealers have become connected with finance companies sharing in profits made by such companies. Frequently purchasers of cars of many makes have paid excessive finance charges. This has increased the ultimate price paid by the consumer. For a long time it has been apparent to plaintiff and others engaged in the automobile business that a great service would be performed to buyers of cars if a uniform insurance protection and the benefit of a moderate and uniform financing charge applicable to all retail time purchasers could be obtained. The Chrysler Sales Corporation was the first automobile company to work out and announce arrangements for securing this result.

(7) On or about the 16th day of June, 1925, said Chrysler Sales Corporation and the Palmetto Fire Insurance Company, an insurance corporation duly organized and existing under and by virtue of the laws of the State of South

Carolina, with its principal office in Sumter, in said state, and duly authorized and licensed to conduct and transact business of writing direct fire and theft insurance in the State of Michigan, and maintaining a duly licensed general agency in the State of Michigan, but not licensed to do business in the State of Wisconsin, and not doing any business or maintaining any agency therein, duly executed in the State of Michigan a contract or policy of insurance made and to be performed in the State of Michigan, wherein and whereby said Palmetto Fire Insurance Company undertook to insure all Chrysler automobiles sold in the United States at retail during the term of the policy against fire and theft for one year from the date of such sale, said insurance being granted under and pursuant to the terms and conditions of said contract or policy of insurance [fol. 13] anee. A copy of said policy is attached hereto, marked Exhibit "A" and made a part of this bill.

(8) Said contract or policy is what is known as an open policy. Its term is for one year from July 1, 1925, covering against loss by fire or theft all Chrysler cars sold in the United States during the policy year for the full factory list price f. o. b. Detroit, for a term of one year from the date of sale to the retail purchaser. Under the terms of said contract sale to the retail purchaser. Under the terms of said contract or policy insurer is to issue a certificate in the name of Chrysler Sales Corporation for the account of whom it may concern whenever a car is reported sold at retail. Said policy expressly provides, however, that omission to report the sale of a car or to issue a certificate in respect thereof shall not prevent the retail buyer of the car and others interested from being protected under said policy. Only said Chrysler Sales Corporation pays, or is liable to pay to said Palmetto Fire Insurance Company the agreed premium on said policy, and said premium is paid in the State of Michigan. Certificates are mailed by the Insurance Company from Michigan to the retail purchasers of said cars as a memorandum of the coverage afforded by said open policy, with counterparts to others known to have an interest in the respective cars.

(9) Said Chrysler Sales Corporation having entered into said contract or policy thereupon obtained and made available to retail purchasers of Chrysler cars a reduced uni-

form finance rate for time purchases, to-wit, eight per cent of the unpaid balance and announced the same to the public. When retail sale of a Chrysler car is made, whether for cash or on time, the purchaser and other parties interested are protected by the said Michigan contract made between plaintiff and said Palmetto Fire Insurance Company. Whether said car is sold for cash or on [fol. 14] time, the price is the same, except for said finance charge of eight per cent on unpaid balance if the car is sold on time. No purchaser may obtain his car at a less price whether or not he desires the protection of such insurance. The insurance comes into effect under the Michigan contract made by plaintiff with said Palmetto Fire Insurance Company, and neither the plaintiff herein nor any other distributor or dealer can do anything to prevent this insurance coming into effect. For the protection of purchasers who may desire to themselves take out insurance giving them protection other than that provided by said contract or policy, said policy provides that if such purchaser takes other insurance, the insurance under said policy shall be merely excess insurance.

(10) Plaintiff is not an agent of the Chrysler Sales Corporation. Plaintiff is conducting its own business. The course of the business is as follows: Plaintiff buys Chrysler cars from said Chrysler Sales Corporation for a cash price computed as follows: List prices less a given discount, plus war tax and certain delivery charges. From time to time as occasion may have required changes have been made in amount of list prices, discount, or delivery charges which have also been known as handling charges or unloading charges. In computing the discount there is not included either the war tax, freight or the delivery charge. Plaintiff pays the freight and charges an increased price to dealers because of having paid said freight or otherwise taken care of transportation of cars to territory in which plaintiff sells cars as above stated. Plaintiff sells to dealers in said territory for cash at a price arrived at by deducting a certain discount from the list price and adding freight or transportation charge, war tax and delivery charges. The dealer in turn sells to the retail purchaser at a price equal to the list price plus freight or transportation [fol. 15] charges, war tax, and delivery charge. The

retail dealer reports to Chrysler Sales Corporation the name of the purchaser, date of sale, motor number, style, etc., on retail sales made. Thereafter said retail purchaser and other parties having an interest in the car receive by mail from said insurance company from its office in Detroit certificates which state the coverage afforded by said Michigan insurance contract. On July 1, 1925, the delivery charge on all models of Chrysler cars was increased and fixed at a certain amount for each type of Chrysler car.

(11) Neither plaintiff nor any of the dealers selling Chrysler cars in plaintiff's territory above referred to takes any part in the writing or placing of said insurance under said Michigan contract. Neither plaintiff nor any such dealer solicits or receives or transmits any application for insurance. No arrangement that plaintiff or any dealer should make with any purchaser can change the protection afforded by the policy or prevent it from taking effect. Neither does plaintiff or any such dealer solicit, demand, receive or transmit any premiums. Plaintiff and every such dealer must pay for each car on receipt of same the full price as above set out and cannot get back any part of said purchase price paid for the car. What plaintiff and each such dealer receives from any purchaser upon the sale of a car is the absolute property of plaintiff or such dealer. It is the proceeds of the sale of its or his own property which has already been paid for. Neither plaintiff nor any such dealer is bound to or does transmit to anybody as a premium for insurance or in any other guise any part of such purchase price. Neither plaintiff nor any such dealer acts in any manner in behalf of or as an agent or employe of said Palmetto Fire Insurance Company. Neither the plaintiff nor any such dealer receives any commission or other compensation in any form on or by virtue of the insurance protection afforded to the retail purchaser by said Michigan contract.

(12) Chrysler cars are now being sold in Wisconsin in large numbers by plaintiff and dealers who buy from plaintiff and others. The retail purchasers thereof and other parties interested in said cars wherever said purchasers or parties may reside are protected by said insurance policy. Defendant claiming to act as Insurance Commissioner of the State of Wisconsin has ruled and announced

to the plaintiff and to said Chrysler Sales Corporation, and to the public that the sale of Chrysler cars, pursuant to the plan hereinbefore described, wherein and whereby the purchaser becomes protected by the Michigan insurance contract as above stated is contrary to the laws of the State of Wisconsin, and that plaintiff and every Chrysler distributor or dealer selling Chrysler cars in Wisconsin is violating the criminal and civil laws of said State, including among others the following Statutes: Sections 4575s, 209.04; 209.05; 203.08; 201.44, Wisconsin Statutes, 1923 and other statutes not specified by defendant. Defendant has threatened and is now threatening to procure the arrest and conviction of every Chrysler distributor or dealer selling in Wisconsin any Chrysler car the purchaser of which is or may be protected under said insurance contract made between Chrysler Sales Corporation and Palmetto Fire Insurance Company. Plaintiff and a number of dealers buying Chrysler cars from plaintiff as hereinbefore stated have sold a considerable number of Chrysler cars pursuant to the course of business hereinbefore described since July 1, 1925, the retail purchasers being protected by said Michigan contract of insurance as hereinbefore alleged and defendant threatens to immediately institute both criminal and civil proceedings against plaintiff and said dealers on account thereof and on account of any future sales so made. It is not possible for plaintiff or any such dealers to sell Chrysler cars at all without the retail purchaser and other [fol. 17] parties interested receiving such insurance protection. Plaintiff and said dealers are now in a position where they must either abandon the sale of Chrysler cars, thereby sustaining large and irreparable loss of business and good will, and their investment in advertising and in developing a market for Chrysler cars, or continue to sell as hereinbefore described. Defendant has sent out and is giving out and publishing letters and communications stating that said Chrysler Sales Corporation and its distributors and dealers in Wisconsin, including the plaintiff and said Palmetto Fire Insurance Company, are violating the law of Wisconsin by virtue of sales of cars as hereinbefore alleged. By and as the result of said threats and communications published by defendant, dealers and prospective retail buyers of Chrysler cars in plaintiff's said territory in Wisconsin are being harassed and intimidated and brought



into a state of uncertainty seriously and irreparably injurious to plaintiff's business. Unless relief by temporary restraining order is immediately granted to plaintiff against said threats and said threatened acts of defendant, plaintiff's business will be destroyed or irreparably damaged and plaintiff will suffer immediate and irreparable loss and damage before the matter can be heard on notice. Unless said restraining order is followed by temporary injunction against said acts and threatened acts pending this action and until final decree irreparable loss and damage will result to plaintiff before the merits of this action can be finally determined. Plaintiff had no adequate remedy at law. The injuries done by said acts and threats of defendant are not and will not be compensable by damages. The actions threatened by defendant would result in multiplicity of prosecutions which would irreparably damage and injure the sale of Chrysler cars in plaintiff's said territory and irreparably injure the good will of plaintiff and the value of plaintiff's business. Unless immediately restrained defendant will cause the arrest and prosecution of plaintiff and said dealers and of others [fol. 18] under the statutes hereinbefore mentioned which impose extremely severe penalties and forfeitures. The result of said arrests and prosecutions would be to practically destroy plaintiff's business in Chrysler cars and plaintiff's property and good will hereinbefore referred to, irrespective of the final outcome of said arrests and prosecutions and irrespective of the final outcome of this action. The penalties and forfeitures under said statutes, if said statutes can and do prohibit the acts of plaintiff and said dealers hereinbefore mentioned, apply to each sale made by plaintiff and each such dealer as a separate offense and in the aggregate would reach such a large sum as to preclude a test of the validity of said statutes by awaiting the threatened arrests and actions.

(13) If and to the extent that the laws of the State of Wisconsin purport or may be construed to prohibit plaintiff and other distributors and dealers in Chrysler cars in Wisconsin from making sales in the manner hereinbefore set forth of automobiles the retail purchasers of which shall be protected by said contract in Michigan, or to subject plaintiff and said dealers and distributors to criminal



prosecution and punishment or to forfeitures by reason of sales so made by them, or purport or may be construed to invalidate or otherwise apply to said insurance contract made by Chrysler Sales Corporation in Michigan with Palmetto Fire Insurance Company, and the protection afforded by same to purchasers of Chrysler cars in Wisconsin and others interested in said cars, then to that extent said state statutes are void as violating and as contrary to the constitution of the United States and amendments thereto and particularly the Fourteenth Amendment thereof by reason of depriving the Plaintiff and said [fol. 19] customers of plaintiff of property without due process of law, impairing the freedom of contract guaranteed by the Federal Constitution and denying to the plaintiff and said dealers the equal protection of the law, and as attempting to regulate, prohibit and burden the making and performance of a contract lawfully made and to be performed outside the limits of the State of Wisconsin. For the same reason, the said acts and communications, rulings and threats of defendant as Commissioner of Insurance of the State of Wisconsin as hereinbefore alleged are likewise a violation of the Constitution of the United States.

(14) There are many persons in Wisconsin who have sold and are selling Chrysler cars in the same manner as plaintiff and dealers of plaintiff as hereinbefore described and who are affected and will be affected by the acts and threatened acts of defendant hereinbefore referred to in the same manner as plaintiff and whose situation as to the subject matter of this action is substantially the same as plaintiff's. Said parties are so numerous that filing a separate bill for each or joining them in a bill, or bringing them all before the court, is impracticable. This action is brought for the benefit of plaintiff and all such parties so similarly situated.

(15) For as much therefore as plaintiff is without remedy in the premises except in a court of equity and to the end that plaintiff may obtain from this Honorable Court the relief to which plaintiff is by right and equity entitled, plaintiff respectfully prays that the above named defendant be directed to full true and perfect answer make to this [fol. 20] bill of complaint, but not under oath, answer

under oath being hereby expressly waived, and that defendant, and his successors in office, and his deputies, agents and employes and all persons acting for him be permanently restrained and enjoined from bringing or causing to be brought or threatening to bring or to cause to be brought any prosecutions or any actions or proceedings for the recovery of penalties or forfeitures or any civil actions or proceedings against the plaintiff or against any distributors of or dealers in Chrysler cars in Wisconsin based on or purporting to be based on or by reason of said contract of insurance between said Chrysler Sales Corporation and Palmetto Fire Insurance Company or based on or purporting to be based on or by reason of any rights existing or arising in favor of residents of Wisconsin or in respect to property situated in Wisconsin by reason of the existence of said contract of insurance or the performance thereof or the sale of Chrysler cars in Wisconsin, or based on or purporting to be based on or by reason of any of the acts done or to be done or business transacted or to be transacted by plaintiff or by any distributor of or dealer in Chrysler cars in Wisconsin as described in detail in this bill of complaint and from interfering in any other manner with it or their said business as aforesaid and from issuing, declaring or publishing any statement official or otherwise that plaintiff or any of said distributors or dealers is violating any law of the State of Wisconsin by virtue of any of the acts or transactions set forth herein. Plaintiff further prays that pending the final hearing and determination of this action a temporary injunction be granted restraining defendant and his successors in office, his deputies, employes and all persons acting under him as hereinbefore prayed and that on final hearing said injunction be made perpetual. Plaintiff further prays for such and other and further relief as may be equitable and proper in the premises.

[fol. 21] Wherefore plaintiff prays that a writ of subpoena issue herein, directed to the above named defendant, W. Stanley Smith, Commissioner of Insurance of the State of Wisconsin, commanding him on a day certain to appear and answer to this bill of complaint.

Clark Motor Company. Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toebaas, Solicitors for Plaintiff. Larkin, Rathbone & Perry, of Counsel.

[fol. 22] *Duly sworn to by George W. Brown. Jurat omitted in printing.*

[File endorsement omitted.]

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[fol. 23] EXHIBIT "A" TO BILL OF COMPLAINT

Non-valued Fire, Theft & Transportation Form  
No. A-9652, Automobile Policy

Palmetto Fire Insurance Company, Sumter, South  
Carolina,

In consideration of the warranties and the premium herein-after mentioned, does issue the Assured named therein, and legal representatives, for the term herein specified, to an amount not exceeding the amount of insurance herein specified, against direct loss or damage, from the perils insured against, to the body, machinery, and all standard factory equipment (but exclusive of extra equipment and accessories) of the automobiles described herein while within the limits of the United States (exclusive of Alaska, the Hawaiian and Phillipine Islands and Porto Rico) and Canada and Mexico, including while in building, on road, on railroad car or other conveyance ferry or inland steamer, or coastwise steamer between ports within said limits,

Amount: \$ As specified: Premium: As agreed.

Name and address of assured: Chrysler Sales Corporation, Detroit, Michigan.

and/or for account of whom it may concern as hereinafter specified.

The term of this policy begins at Noon on the 1st day of July, 1925, and ends at Noon on the 1st day of July, 1926 Standard Time. (All certificates issued hereunder, however, remaining in full force and effect for the term specified in such certificates.)

Amount of Insurance: As specified. Dollars (\$—.)

## Warranties

The following are statements of facts known to and warranted by the Assured to be true, and this policy is issued by the Company relying upon the truth thereof:

1. Assured's occupation or business is: This information not required by insurer.

2. The following is the description of the automobiles: Information not required except as hereinafter specified.

3. The facts with respect to the purchase of the automobile described are as follows: This information not required by insurer except as hereinafter specified.

4. The uses to which the automobile described are and will be put, are: This information not required by insurer.

5. The automobile described is usually kept in garage, located: This information not required by insurer.

## Non-vitiation Clause

Anything hereinafter contained to the contrary notwithstanding, the insurance provided for herein shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which any automobile covered by such insurance shall be used (except the unlawful transportation of liquor) nor by the nature of the occupation or business of any of the Assured, nor by the location where any such automobile is kept.

## [fol. 24] Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or

vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

### Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies;

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by Invasions, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto:

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership; or in the case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

### Conditions

Limitation of Liability and Method of Determining Same.—This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other

of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

**Abandonment.**—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

**Loss for which Bailee for Hire is Liable.**—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by way of [fol. 25] loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deduction cost and expense of collection.

**Noon.**—The word "Noon" herein means noon of standard time at the place the contract was made.

**Misrepresentation and Fraud.**—Any certificate issued hereunder shall be void if the Assured name therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

**Protection of Salvage.**—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the

benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

**Notice and Proof of Loss.**—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to be the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the county and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.



**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice ascertainment, estimate and verified proof of loss herein required have been received by this Company, and if appraisal is [fol. 26] demanded, then not until sixty days after an award has been made by the appraisers.

**Subrogation.**—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

**Suit Against Company.**—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall fully comply with all the foregoing requirements, nor unless commenced within twelve (12) months next after the happening of loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fol. 27] “EXHIBIT A” TO EXHIBIT A TO BILL OF COMPLAINT

Witnesseth, for valuable consideration, it is agreed that the following rider shall be attached to and form a part of Policy No. A9652 of the Palmetto Fire Insurance Company,



herein called Insurer, and shall supersede and take the place of anything to the contrary in the other conditions and provisions of this policy.

### I. Definitions

The following words, whether singular or plural, unless the context otherwise requires, shall mean—

Chrysler shall mean Chrysler Sales Corporation, a Michigan Corporation, of Highland Park, Mich., its successors and assigns.

Commercial Credit shall mean Commercial Credit Company, a Delaware Corporation of Baltimore, Md., its successors and assigns including its Branches and Sub-Branched.

Affiliated companies shall mean Commercial Credit Corporation, a New York Corporation of New York, N. Y.; Commercial Credit Company, Inc., a Louisiana Corporation of New Orleans, La.; Commercial Credit Trust of Chicago, Ill., a common law trust with trust deed on file at The Old Colony Trust Company, Boston, Mass., and shall also include any and all other corporations, common law trusts, firms or companies with which Commercial Credit is now or may become affiliated through stock ownership or otherwise; and all the branches and sub-branches of such affiliated Companies through which they may operate in financing the retail sale or lease of Chrysler Cars, and their respective successors or assigns.

Other finance companies shall mean banks, trust companies, finance or credit companies, corporations, co-partnerships, common law trusts, dealers, individuals and other organizations, other than Commercial Credit or Affiliated Companies, who may finance the retail sale or lease of Chrysler cars.

Chrysler cars shall mean new and unused commercial and passenger automobiles to be sold or distributed by Chrysler and which are or may be sold or distributed by Chrysler and which are or may be manufactured by Maxwell Motor Corporation, a West Virginia Corporation, of Detroit, Michigan, its successors or assigns.

Finance shall mean to purchase or loan upon or to cause to be purchased or loaned upon, to discount or otherwise acquire the notes and/or security instruments made and

given to dealers by purchasers in connection with the purchase or lease of Chrysler cars at retail.

Dealer shall mean persons, firms, or corporations selling or leasing or agreeing to sell or lease Chrysler cars at retail.

Purchaser shall mean persons, firms or corporations purchasing or agreeing to purchase Chrysler cars at retail for cash or on deferred payments, or lease Chrysler cars at retail on deferred payments.

Notes shall mean promissory notes or other obligations made and given by purchasers to dealers as evidence of the [fol. 28] deferred payments owing on the retail purchase or lease price of Chrysler cars when they are sold or leased by dealers to purchasers upon a deferred payment plan.

Term of this policy shall mean the period during which insurance hereunder may become effective, to wit: July 1, 1925 to June 30, 1926, both dates inclusive.

Security instruments shall mean conditional sale contracts, chattel mortgages, leases, bailment contracts, other instruments, reserving or creating title, liens, security or other property interest in Chrysler cars sold at retail to purchasers on a deferred payment plan.

Policy shall mean this contract of insurance.

Certificate shall mean memorandum of insurance under this policy issued or to be issued as herein provided.

Insurance shall mean insurance against the hazards provided for in policy and/or certificates.

## II. Purpose

Chrysler desires to increase the retail sale of Chrysler cars and to obtain for dealers a uniform maximum rate for financing retail sales and to provide insurance at a uniform maximum rate throughout the entire United States for the benefit of purchaser and/or other parties mentioned in the policy and certificates as their respective interests may appear on each Chrysler car purchased at retail. Chrysler proposes to advertise throughout the United States the benefits resulting to purchasers from insurance under policy and certificates issued hereunder. Commercial Credit desires to obtain so far as possible the financing of the retail sales of Chrysler cars. Insurer desires to obtain insurance in respect to all Chrysler cars sold and leased and delivered at retail to purchasers by dealers throughout the United States during the term of this policy.

### III. Assured and Coverage.

Insurer does hereby insure Chrysler, Commercial Credit, and all Affiliated Companies, other Finance Companies, Dealers and Purchasers as their interest may appear against the hazards mentioned in the printed part of this policy to Chrysler cars but in no event shall this insurance cover loss or damage by confiscation of Chrysler cars used in violation of any liquor or prohibition statutes.

All banks, trust companies, persons, firms or corporations with or to whom Commercial Credit and/or Affiliated Company and/or Other Finance Companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments, shall be protected by this insurance.

All parties covered hereunder shall be protected and be considered parties to this policy with the same force and effect as if they severally accepted the same, upon the acceptance of this contract by Commercial Credit and Chrysler.

Coverage hereunder and under said Certificates shall be for one hundred (100%) per cent of the list price of each Chrysler car covered hereby, f. o. b. Detroit, on date of purchase or lease of same by purchaser, including standard [fol. 29] equipment but exclusive of extra equipment and accessories, but in no event shall the Insurer be liable upon loss to or of any Chrysler car for an amount in excess of the actual cash value thereof at the time of such loss.

Coverage hereunder and under Certificates shall be automatically effective from the date on which (during the term of this policy) each Purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, whichever shall be the earlier, and shall extend in respect to such Chrysler car for a period of twelve (12) months; provided that in every case where a note and/or security instruments shall have been given in connection with the purchase of any Chrysler car, coverage on such car shall be effective from the date of such note and/or security instruments; and provided further, that no Chrysler car shall be insured hereunder which shall have been in possession or in transit to any dealer or distributor on July 1, 1925, and which shall not have been included in any detailed report provided for in Paragraph VII hereof.

It is expressly agreed that all Chrysler cars shall be automatically covered as provided herein, notwithstanding the failure or omission to apply for a Certificate or the failure or omission to issue a Certificate or the failure or omission to report any Chrysler car as required herein. No act or omission to act by any purchaser or any of the other insured hereunder shall vitiate or in any manner effect the indemnity or coverage of the other parties insured hereunder not responsible for such act or omission to act, it being the intent that only parties responsible for such act or omission to act shall suffer thereby.

Anything herein to the contrary notwithstanding, is expressly agreed that no Chrysler car shall be insured hereunder which does not at the time when the insurance thereon would otherwise become effective hereunder, carry a Class A Rating for fire insurance assigned by the National Board of Fire Underwriters, or is not continuously equipped with a locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

Coverage on Chrysler cars shall not be vitiated or affected because such Chrysler cars are operated across the border of the United States into the territory of the Government of Mexico.

The insurance effected hereby shall be deemed to have been placed with Insurer through such insurance brokers as Commercial Credit may from time to time designate.

#### IV. Certificates

Insurer shall issue certificates to purchaser substantially in the form attached hereto which certificates and insurance evidenced hereby shall not be subject to cancellation by either party. If Chrysler cars are financed, there shall be issued upon request a duplicate of such certificate to Commercial Credit, Affiliated Companies or Other Finance Companies financing such Chrysler cars.

#### V. Transfers

If any original purchaser should transfer his interest in [fol. 30] any Chrysler car insured hereunder and should mail a notice of such transfer, together with his certificate

and \$1.50 to Insurer, said insurance coverage shall continue for the unexpired term originally insured so as to protect transferee of original purchaser's interest, and Insurer shall issue new certificate for such unexpired term to transferee; provided, however, that if any such Chrysler car has been financed the consent in writing of Commercial credit, Affiliated Companies or Other Finance Companies financing the same shall first have been obtained to such transfer.

## VI. Excess Insurance

In all cases where Insurer disclaims liability to a purchaser on account of other insurance, coverage hereunder shall be considered as excess insurance and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted; if full recovery has not been made from such other insurance of all amounts owing on any note for a Chrysler car financed within 90 days of the filing of a claim for loss. Insurer shall advance the amount of its liability hereunder to the assured authorized to receive payment of the loss as a loan without interest, the payment of which shall be conditioned upon, and only to the extent of, any recovery from such other insurance.

In all cases where Insurer disclaims liability to a purchaser, Insurer may pay the amount of its Liability hereunder to the party authorized to receive the same, other than purchaser, as a loan without interest instead of a payment of a loss, the repayment of which to Insurer shall be conditioned upon and only to the extent of any recovery from purchaser by the party to whom such loan has been made by Insurer; if any action is brought against Purchaser at the request of Insurer, Insurer shall pay all attorneys' fees, expenses and costs of such action.

If any claims or legal action should be made or commenced against Chrysler, Commercial Credit, Affiliated Companies or other Finance Companies by purchaser arising out of the refusal of Insurer to pay any loss under this policy or certificate, Insurer shall defend any such claim or action and pay all attorney's fees, costs and expenses incurred and or judgments recovered in any such claim or action.

## VII. Reports

At any time or from time to time during the term of this policy Chrysler shall send original detailed reports to Commercial Credit and a duplicate thereof to Insurer by mailing the same to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for account of Insurer, of such Chrysler cars, with models and serial numbers thereof as were in the possession of or in transit to its distributors and or dealers and unsold as of July 1, 1925, and on which insurance is desired hereunder.

Chrysler shall send an original report to Commercial Credit and a duplicate thereof to Insurer by mailing same to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for the account of Insurer, on or before the 15th day of each month beginning with the Month of August, 1925, for shipments during July, 1925, and ending with the month of July, 1926, showing separately the number of all [fol. 31] Chrysler 4 Cylinder, 6 Cylinder and Commercial cars shipped to its dealers and distributors throughout the United States during the preceding month, which Chrysler cars may be sold at retail in the future and then may become subject to insurance hereunder; said reports shall show the number of Open and Closed Chrysler 4 Cylinder, Open and Closed Chrysler 6 Cylinder, and Commercial Chassis and Commercial Cars with Bodies, with the serial and motor numbers respectively, thereof.

Chrysler further agrees to submit such other information as Insurer or Commercial Credit may from time to time reasonably require regarding Chrysler cars that are or may become covered by Insurance hereunder and to permit Insurer or Commercial Credit from time to time to check its reports against those of Chrysler in regard to such Chrysler cars.

## VIII. Premiums

Agreed premiums are to be paid by Chrysler for insurance hereunder and shall be paid by Chrysler to Commercial Credit or to any insurance broker designated by Commercial Credit on or before the 15th day of each month, beginning on August 15, 1925, and ending on July 15, 1926, for all Chrysler cars reported by its distributors and dealers as sold and/or leased during the preceding month,

and insured hereunder, and a report thereof in detail shall accompany such remittance of premiums.

Commercial Credit shall on or before the 25th day of each month remit or cause the insurance brokerage concern designated by it to remit said insurance premiums to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for the account of Insurer, and guarantees the payment of such premiums.

Payment of the agreed premiums hereunder made by Chrysler to Commercial Credit or to any insurance broker designated by it for that purpose shall be considered as payments made to the Insurer hereunder and the failure of Commercial Credit or of any such broker to remit such payments to Insurer shall not affect the insurance effected hereby or the validity of any certificate issued hereunder, or the rights of Chrysler hereunder.

#### IX. Payment of Losses

Payment of all losses claimed hereunder shall be made to purchaser unless the purchase of any Chrysler car has been financed in which case payment of all losses shall be made to Commercial Credit, Affiliated Companies or Other Finance Companies or Dealers financing the same for the account of all parties as their respective interests may appear.

#### X. Examination

All parties insured hereunder shall submit to an examination under oath by any person named by Insurer, and subscribe to same as often as shall be required, and shall produce for examination all books of accounts, bills, notes, or other records, or certified copies thereof if the originals cannot be found, in respect to any matters pertaining to coverage upon Chrysler cars hereunder, at such reasonable place as may be designated by Insurer or its representatives, and shall permit extracts and copies thereof to be made.

[fol. 32]

#### XI. Replacements

If Insurer should so select Chrysler will sell to Insurer new Chrysler cars at the wholesale list price, f. o. b. Detroit, on Date of loss, to replace any similar Chrysler car as to



which there has been filed a claim with the Insurer under this policy and/or certificate issued thereunder for total loss.

## XII. Recording

Recording or filing of any security instruments shall not be required by Insurer but shall be optional with Commercial Credit, Affiliated Companies, Other Finance Companies and/or holders or owners of such security instruments.

## XIII. Cancellations

This policy and certificates are not subject to cancellation by Insurer or any of the assured but this policy shall terminate June 30, 1926, unless previously renewed by mutual agreement; provided, however, that Certificates covering Chrysler cars insured as herein provided on any date up to and including the date of termination of this Policy shall be and remain in effect and protect all parties concerned until their respective expiration.

## XIV. Qualified Company

Insurer warrants that it is qualified to do business in the State of Michigan, and that this policy shall be so executed, and all certificates shall be so issued, as to comply with the insurance laws of all of the States in which the purchasers reside.

## XV. Michigan Law to Govern

Policy and certificates are to be construed and governed according to the laws of the State of Michigan.

To Commercial Credit Company.

To Chrysler Motor Corporation.

The foregoing rider will be attached to a standard form of automobile policy countersigned by our duly authorized representative in the State of Michigan and policy contract delivered to you completed.

Palmetto Fire Insurance Co., by Alexander & Alexander, Inc., General Agents. (Sgd.) W. F. Alexander, Vice-President.



Approved and accepted by P. Moses, President Palmetto Fire Insurance Co.

[fol. 33]

## Form of Certificate

No. —

### Purchaser's Original Copy

#### Non-valued Fire, Theft & Transportation Automobile Form

This is to certify that under policy No. — of the Palmetto Fire Insurance Company of Sumter, South Carolina, issued to Chrysler Sales Corporation, covering for account of whom it may concern, the new Chrysler Passenger or Commercial car, sold or leased and delivered to Name of Purchaser: — —; Address (No.): —, (Street:) —, (City:) —, (State:) —, and described as follows: Year: —; Model (If truck, state ton-age); —; Type of Body: —; (Factory or Serial No.): —; Motor No. —, is insured against direct loss or damage from the perils insured against to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and/or while in Canada and/or in Mexico, including while in building, on road, on railroad car or other conveyance, ferry or inland steamer, or coast-wise steamer between ports within said limits, for the period beginning at Noon — —, —, and ending at Noon — —, —, Standard Time, for a sum not exceeding — dollars (\$—), being list price including all standard factory equipment F. O. B. Detroit, Michigan, subject to all the conditions, stipulations, provisions, exclusions and warranties set forth in said policy or which appear hereon.

The interest of the Chrysler Sales Corporation, and/or of purchasers, owners, dealers, finance companies, banks, trust companies, persons, firms or corporations or others having an insurable interest in said automobile are protected under this insurance with the same force and effect as if they severally accepted same, and the existence of all such interests is permitted.

Loss, if any, to be adjusted with purchaser, though to be paid subject to all conditions of this certificate only to, Name: — — —, Address: — — —, for account of all interests.

This insurance does not in any event cover loss or damage by confiscation of said car while used in violation of any liquor or prohibition statute.

The insurance hereunder shall be considered as excess insurance in the event of any other insurance covering the hazards hereunder insured and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted.

It is a consideration of this insurance that the within described automobile shall be continuously equipped with locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

This insurance is not subject to cancellation.

Anything herein contained to the contrary notwithstanding this insurance shall not be vitiated by the existence of any lien or mortgage nor by the purpose for which the automobile is used (except the unlawful transportation of liquor) nor by the nature of the assured's occupation or business nor by the location where the automobile is kept.

This insurance may be transferred by the original holder of this certificate, mailing notice of such transfer together with this certificate and \$1.50 to insurer, said insurance continuing for the unexpired term originally insured, protecting the transferee's interest, providing consent in writing of any company financing the same shall first have been obtained to such transfer.

This certificate shall not be valid until countersigned by duly authorized agent at Detroit, Michigan.

Countersigned at Detroit, Mich, (Date:) — — —, by — — —, Agent.

#### Provisions Required to be Stated by Law

[fol. 34]

#### Form of Certificate

The policy under which this certificate is issued is subject to the following conditions:

## Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

## Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto;

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership, or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise;

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

### Conditions

**Limitation of Liability and Method of Determining Same.**—This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly with proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

**Abandonment.**—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

**Loss for Which Bailee for Hire is Liable.**—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which a bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 35] way of loan of money equivalent of such loss or damage, which loan shall in no circumstance affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

**Noon.**—The word "Noon" herein means noon of standard time at the place the contract was made.

**Misrepresentation and Fraud.**—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing

by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

**Protection of Salvage.**—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company of its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

**Notice and Proof of Loss.**—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for

fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the County and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him the expenses of appraisal and umpire shall be paid by parties equally.

**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company and if ap-[fols. 36 & 36½] praisal is demanded, then not until sixty days after an award has been made by the appraisers.

**Subrogation.**—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

**Suit Against Company.**—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commended within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the law of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then

existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

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[fols. 37 & 38] Summons and sheriff's return, filed August 5, 1925, omitted in printing.

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[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF B. E. HUTCHINSON—Filed August 22, 1925

STATE OF WISCONSIN,

County of Douglas, ss:

B. E. Hutchinson being first duly sworn, states: That he is an officer, to-wit: the Vice President and Treasurer of the Chrysler Sales Corporation, named in the complaint in this action; that he has read the complaint in this action and knows the contents thereof, and that to his knowledge the facts as therein alleged are true; that the contract of insurance between the Chrysler Sales Corporation and the Palmetto Fire Insurance Company referred to in said complaint, was made June 16, 1925, at Detroit, Michigan, and was in the City of Detroit, Michigan, then and there duly signed, delivered and accepted by said Insurance Company and the Chrysler Sales Corporation and the Commercial Credit Company named and referred to in said contract.

That on August 4th, 1925, at the City of Detroit, in the state of Michigan, a further contract or insurance policy was entered into between said Palmetto Insurance Company and said Chrysler Sales Corporation, a copy of which is hereto attached marked Exhibit "A," and consisting of printed pages 28 to 59 inclusive, attached to and made a part hereof; that said contract or policy was signed, delivered and ac-



cepted at Detroit, Michigan, on August 4th, 1925, and was [fol. 40] then and there duly consented to by the Commercial Credit Company.

Affiant further says that the Chrysler Sales Corporation, has not, at any of the times mentioned in the complaint herein, nor at any other time maintained any agencies in the state of Wisconsin, nor had any office for the transaction of business in the state of Wisconsin, nor has it transacted or pretended to transact any business in the state of Wisconsin; but that the Chrysler Sales Corporation sells in Interstate Commerce all the cars sold by it. All cars are sold f. o. b. Detroit and are delivered to common carrier at Detroit, unless the distributor or dealer comes into Michigan and personally obtains the car there. However, cars sold to Michigan distributors and dealers are sold in Michigan.

That said Chrysler Corporation has many customers in the state of Wisconsin, but said customers buy in Interstate Commerce and that all cars sold by said Chrysler Sales Corporation are sold pursuant to contracts of sale involving and to be performed by shipments in interstate commerce;

That the agencies mentioned in the complaint are wholesale dealers who are simply customers of said Chrysler Sales Corporation; such wholesale customers are commonly known in the trade as "distributors;" the sub-dealers, who buy from the distributors are commonly known as "dealers;" each is in business for himself and not acting as agent for the Chrysler Sales Corporation.

All orders for cars from distributors and dealers in the state of Wisconsin to the Chrysler Sales Corporation are accepted or rejected at Detroit, Michigan, by the Chrysler Sales Corporation; the Chrysler Sales Corporation has never sold any car or cars in Wisconsin, but as stated in the complaint herein, has built up a large and valuable business with Wisconsin customers.

[fol. 41] Affiant further says that such business will be irreparably damaged unless a temporary injunction is granted restraining the defendant herein, as prayed in the complaint, pending this action, and that unless such temporary injunction is issued, any final decree which may be rendered in this action would be ineffectual.

That if the defendant is not now temporarily enjoined,



as prayed in the complaint, the injury to the Chrysler Sales Corporation in its business will be immediate and extremely serious.

Affiant further says that if the said laws of Wisconsin should be construed as claimed by the defendant herein, said laws must be held void as in conflict with the full faith and credit clause of the Federal constitution, and also as in violation of the Federal Constitution insofar as the same prevents and prohibits a state from imposing a burden on Interstate Commerce.

B. E. Hutchinson.

Subscribed and sworn to before me this 22nd day of August, 1925. Margaret M. Hoit, Notary Public, Douglas County, Wisconsin. My commission expires Nov. 27, '27. (Notarial Seal.)

[File endorsement omitted.]

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[fol. 42] EXHIBIT "A" TO AFFIDAVIT OF B. E. HUTCHINSON

Non-valued Fire, Theft & Transportation Form

No. A-9657. Automobile Policy

Palmetto Fire Insurance Company, Sumter, South Carolina.

In consideration of the warranties and the premium hereinafter mentioned, does issue the Assured named therein, and legal representatives, for the term herein specified, to an amount not exceeding the amount of insurance herein specified, against direct loss or damage, from the perils insured against, to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) of the automobiles described herein while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and Canada and Mexico, including while in building, on road, on railroad car or other conveyance ferry or inland steamer, or coastwise steamer between ports within said limits,

Amount: \$ As specified. Premium: As agreed.

Name and Address of assured: Chrysler Sales Corporation, Detroit, Michigan, and/or for account of whom it may concern as hereinafter specified.

The term of this policy begins at Noon on the 1st day of July, 1925, and ends at Noon on the 1st day of July, 1926 Standard Time. (All certificates issued hereunder, however, remaining in full force and effect for the term specified in such certificates).

Amount of Insurance: As specified. Dollars (\$—).

### Warranties

The following are statements of facts known to and warranted by the Assured to be true and this policy is issued by the Company relying upon the truth thereof:

1. Assured's occupation or business is: This information not required by insurer.

2. The following is the description of the automobiles: Information not required except as hereinafter specified.

3. The facts with respect to the purchase of the automobile described are as follows: This information not required by insurer except as hereinafter specified.

4. The uses to which the automobile described are and will be put are: This information not required by insurer.

5. The automobile described is usually kept in garage, located: This information not required by insurer.

### Non-vitiation Clause

Anything hereinafter contained to the contrary notwithstanding the insurance provided for herein shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which any automobile covered by such insurance shall be used (except the unlawful transportation of liquor) nor by the nature of the occupation or business of any of the Assured, nor by the location where any such automobile is kept.

[fol. 43] Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

### Exclusions

Property Excluded.—This Company shall not be liable for;

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by Invasions, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto:

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership; or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

### Conditions

Limitation of Liability and Method of Determining Same.—This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or

estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

**Abandonment**—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company, and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

**Loss for Which Bailee for Hire is Liable**—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 44] way of loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

**Noon**.—The word "Noon" herein means noon of standard time at the place the contract was made.

**Misrepresentation and Fraud**.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

**Protection of Salvage**.—In the event of loss or damage occasioned by a peril insured against herein the Assured

shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be consider as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

**Notice and Proof of Loss.**—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the county and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each

item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company, and if ap-[fol. 45] praisal is demanded, then not until sixty days after an award has been made by the appraisers.

**Subrogation.**—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

**Suit Against Company.**—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall fully comply with all the foregoing requirements, nor unless commended within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fol. 46] EXHIBIT "A" TO EXHIBIT A TO AFFIDAVIT OF B.  
E. HUTCHINSON

Rider attached to and forming part of policy No. A-9657 of the Palmetto Fire Insurance Company herein called "Insurer." This rider shall supersede and take the place of anything to the contrary in the conditions and provisions of the policy to which it is attached.

I. Definitions

The following words whether singular or plural, unless the context otherwise requires, shall be given the following meanings:

Chrysler shall mean Chrysler Sales Corporation, a Michigan Corporation of Highland Park, Michigan, its successors and assigns.

Finance companies shall mean banks, trust companies, finance or credit companies, corporations, partnerships, trusts, dealers, individual and other organizations who may finance the retail sale or lease of Chrysler cars.

Chrysler cars shall mean new and unused commercial passenger automobiles sold or distributed by Chrysler and which have been or may hereafter be manufactured by Chrysler Motor Corporation, a Delaware corporation, of Detroit, Michigan, its successors or assigns.

To finance shall mean to purchase or loan upon, or to cause to be purchased or loaned upon, to discount or otherwise acquire the notes and/or security instruments made and given to dealers by purchasers in connection with the purchase or lease of Chrysler cars at retail.

[fol. 47] Dealer shall mean persons, firms or corporations selling or leasing, or agreeing to sell or lease Chrysler cars at retail.

Purchaser shall mean persons, firms or corporations purchasing or agreeing to purchase Chrysler cars at retail for cash or on deferred payments, or to lease Chrysler cars at retail on the deferred payment plan.

Notes shall mean promissory notes or other obligations made and given by purchasers to dealers as evidence of the deferred payments owing on the retail purchase or lease price of Chrysler cars when they are sold or leased by dealers to purchasers upon a deferred payment plan.



Term of this policy shall mean the period during which insurance hereunder may become effective, to wit: from July 1st, 1925, to June 30th, 1926, both dates inclusive.

Security instruments shall mean conditional sale contracts, chattel mortgages, leases, bailments, contracts, and/or other instruments reserving or creating title, liens, security or other property interest in Chrysler cars sold at retail to purchasers on a deferred payment plan.

Policy shall mean this contract of insurance.

Certificate shall mean memorandum of insurance under this policy issued or to be issued as herein provided.

Insurance shall mean insurance against the perils insured against in the policy and/or certificate.

## II. Assured and Coverage

The Insurer does hereby insure finance companies, dealers and purchasers as their interests may appear against [fol. 48] loss or damage caused by or arising out of any of the hazards mentioned in the printed part of this policy, to Chrysler cars, provided, however, that the lawful seizure and/or confiscation of any Chrysler car for violation of any liquor or prohibition statute by or with the knowledge or consent of the purchaser, shall terminate the liability thereunder of Insurer as to the purchase or leases of such car, but shall not affect the liability hereunder of Insurer as to other parties.

All banks, trust companies, persons, firms or corporations with or to whom finance companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments shall be protected by this insurance.

Coverage hereunder and under certificates issued hereunder shall be for one hundred per cent (100%) of the list price, F. O. B. Detroit, of each Chrysler car insured hereunder, on the date of purchase or lease of said by the purchaser, including standard equipment, and any extra equipment and accessories costing in the aggregate not to exceed One hundred dollars (\$100). The limit of liability of the Insurer for loss or damage to a Chrysler car with standard equipment insured hereunder, shall be the total cash value of such car and standard equipment at the time of such loss or damage. The limit of liability of Insurer for loss or dam-



age to extra equipment and accessories insured hereunder, shall be seventy-five per cent (75%) of the actual cash value of such extra equipment and accessories at the time of such loss or damage, in no event to exceed the sum of seventy-five dollars (\$75.00).

Coverage hereunder and under certificates is automatically effective from the date on which (during the term of this policy) each purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, which ever shall be the earlier, and shall extend in respect to such Chrysler car for a period of twelve (12) months; provided, that in [fol. 49] every case where notes and/or security instruments shall have been given in connection with the purchase of any Chrysler car, coverage on such car shall be effective from the date of such notes and/or security instruments.

It is specifically agreed that every Chrysler car sold at retail during the term of this policy, shall be automatically covered hereunder, notwithstanding any failure or omission to issue a certificate or any failure or omission to report the sale of such car as required herein. No act or omission of any beneficiary hereunder shall vitiate or affect the indemnity or coverage of any other party insured hereunder, who is not responsible for such act or omission to act, it being the intent of this policy that only parties responsible for acts or omissions to act shall suffer thereby.

Anything to the contrary herein notwithstanding, it is expressly agreed that no Chrysler car shall be covered hereby which does not, when the purchaser takes delivery of the same or receives a bill of sale thereof, carry a Class A rating for fire insurance by the National Board of Fire Underwriters or which is not continuously equipped with a locking device approved by the Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

Coverage hereunder on any Chrysler car shall not be vitiated or affected because such Chrysler car is operated across the border of the United States and into the territory of the Government of Mexico.

### III. Certificates

Insurer shall issue certificates to purchasers in the form attached hereto, which certificates and insurance evidenced [fol. 50] thereby, shall not be subject to cancellation by

either party. If sales of Chrysler cars are financed there shall be issued at the request of finance companies financing same, duplicates of certificates.

#### IV. Transfers

If any original purchaser shall transfer his interest in a Chrysler car, insured hereunder, and shall mail a notice of such transfer together with his certificate, and \$1.50 to the insurer at its office No. —, Detroit, Michigan, (said charge being to defray the cost of issuing a new certificate), insurance hereunder shall inure to the benefit of the transferee for the unexpired term originally insured, and Insurer will issue a new certificate for such unexpired term to such transferee; provided, however, that if the sale of the car so transferred has been financed, the consent in writing of any finance company financing the same shall first be obtained to such transfer.

#### V. Excess Insurance

In all cases where Insurer disclaims liability to a purchaser on account of other insurance, coverage hereunder shall be considered as excess insurance, and shall not apply to any loss or damage until amount recoverable from such other insurance shall have been exhausted; if full recovery has not been made within 90 days of a claim for loss from such other insurance of all amounts owing on any note for a Chrysler car, insurer shall advance the amount of its liability hereunder to the insured authorized to receive payment of the loss or damage as a loan without interest, the [fol. 51] repayment of which shall be conditioned upon and be required to be made only to the extent of any recovery from such other insurance.

In all cases where Insurer disclaims liability to a purchaser, Insurer may pay the amount of its liability hereunder to the party authorized to receive the same, other than purchaser, as a loan without interest, instead of as payment of a loss, the repayment of which loan to the Insurer shall be conditioned upon and be required to be made only to the extent of any recovery from the purchaser by the party to whom such loan has been made by the Insurer. If any action is brought against purchaser at the request

of Insurer, Insurer shall pay all attorney fees, expenses and costs in such action.

#### VI. Disclaimer of Liability by Insurer

If any claim or legal action be made or commenced against Chrysler, or any finance company, by purchaser, arising out of the refusal of insurer to pay any loss under this policy, or a certificate issued hereunder, Insurer shall defend against such claim or action and pay all attorney fees, costs and expenses incurred and/or judgments recovered in any such claim or action.

#### VII. Reports

Commencing with the 15th day of August, 1925, and on the 15th day of each calendar month thereafter until and including July, 1926, Chrysler shall send a monthly report to the Insurer at Detroit, Michigan, of all cars insurance with respect to which is hereunder contemplated and provided for. Such reports shall show separately the number of all Chrysler four-cylinder cars open and closed, Chrysler six-cylinder cars open and closed, commercial chassis and commercial cars with bodice with serial and motor numbers respectively thereof. The report of August 15, 1925, shall show the cars in possession of or in transit to distributors and/or dealers in the United States on July 1, 1925, and cars thereafter shipped during the month ending July 31, 1925. Subsequent reports shall show shipments to distributors and/or dealers in the United States during the calendar month preceding the month in which the report is sent.

Chrysler further agrees to submit such other information as Insurer may from time to time reasonably require regarding Chrysler cars that are or may be covered by insurance hereunder and to permit Insurer from time to time to check its records against Chrysler records in regard to such Chrysler cars.

#### VIII. Premiums

Agreed premiums are to be paid by Chrysler to Insurer through Alexander & Alexander, Inc., General Agents, at —, Detroit, Michigan, for insurance hereunder on or before the 15th day of each month beginning August 15,

1925, and ending July 15, 1926, for all Chrysler cars reported by its distributors and dealers as sold and/or leased during the preceding calendar month and insured hereunder.

Such report shall be accompanied by an itemized statement.

#### IX. Payment of Losses

Payment of all losses claimed hereunder shall be made by purchaser unless the purchase of a car with respect to which claim is made, has been financed in which case payment of the loss shall be made to any finance company, dis-[fol. 53] tributor or dealer financing the same, for account of all parties as their respective interest may appear.

#### X. Examination

All parties insured hereunder shall submit to examination under oath by any person named by Insurer as often as shall be required and shall subscribe to same and shall produce for examination all books of account, bills, notes, or other records, or certified copies thereof if the originals cannot be found, in respect to any matters pertaining to coverage of any Chrysler car hereunder at such reasonable place as may be designated by Insurer or its representatives and to permit extracts and copies thereof to be made.

#### XI. Replacements

If Insurer should so elect Chrysler will sell to Insurer new Chrysler cars at the wholesale list price F. O. B. Detroit on date of loss to replace any similar Chrysler car as to which there has been filed with the Insurer a claim for total loss under this policy and/or certificate issued hereunder.

#### XII. Recording

The recording or filing of security instruments shall not be required by Insurer but shall be optional with the finance company interested and/or holders, and/or owners of such security instruments.

#### XIII. Cancellation

This policy and certificates are not subject to cancellation [fol. 54] tions by Insurer or by any of the insured; this

policy shall terminate June 30, 1926, unless previously renewed by mutual agreement; provided, however, that coverage under certificates issued hereunder at any time during the terms of this policy shall be and remain in full force as to all parties concerned until the expiration dates named in such certificates.

#### XIV. Qualified Company.

Insurer warrants that it is qualified to do business in the State of Michigan, and that this policy is so executed and all certificates thereunder shall be so issued as to comply with and conform to all laws State or Federal at any time applicable, and agrees to do all things which may be necessary to do, in order to comply with said laws and to carry out the terms, provisions and purposes of this policy and of certificates issued hereunder, it being expressly understood that it is one of the purposes of this policy that Insurer shall issue certificates of insurance hereunder with respect to every Chrysler car sold at retail throughout the United States during the term of this policy.

#### XV. Michigan Law and Acceptance

This policy and the certificates issued hereunder are to be construed in accordance with and governed by the laws of the state of Michigan, and acceptance of this policy by Chrysler at Detroit, Michigan, shall put the same in full force and effect with respect to all parties covered hereunder or under any certificate issued hereunder.

Palmetto Fire Insurance Co., by Edwin J. Carter,  
Agent.

Approved and accepted by P. Moses, President Palmetto Fire Insurance Co.

[fol. 55] It is understood and agreed that Policy No. A9657 executed the 4th day of August, 1925, by the Palmetto Insurance Company shall take the place of and be substituted for Policy No. A-9652, executed on or about the 16th day of June, 1925, which is hereby abrogated.

Certificate issued under said Policy A-9652 shall be considered as issued under this policy and be governed by the terms hereof.

Executed at Detroit, Michigan, this 4th day of August, 1925.

Chrysler Sales Corporation, by (S.) H. A. Davies,  
Asst. Treas. Palmetto Fire Insurance Company,  
by (S.) Edwin J. Carter, Agent.

The above contract is consented to by us.

Commercial Credit Company, by — —.

[fol. 56] Form of Certificate. No. —

Purchaser's Original Copy

### Non-valued Fire, Theft, & Transportation Automobile Form

This is to certify that under policy No. — of the Palmetto Fire Insurance Company of Sumter, South Carolina, issued to Chrysler Sales Corporation, covering for account of whom it may concern, the new Chrysler Passenger or Commercial car, sold or leased and delivered to Name of Purchaser: — —; Address (No.): — Street:) —, (City:) —, (State:) —, and described as follows: Year: —, Model: —; Type of Body (If truck, state tonnage): —; Factory or Serial No.: —; Motor No.: —, is insured against direct loss or damage from the perils insured against to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and/or while in Canada and/or in Mexico, including while in building, on road, on railroad car or other conveyance, ferry or inland steamer, or coastwise steamer between ports within said limits, for the period beginning at Noon — —, —, and ending at Noon — —, —, Standard Time, for a sum not exceeding — dollars (\$—), being list price including all standard factory equipment F. O. B. Detroit, Michigan, subject to all the conditions, stipulations, provisions, exclusions and warranties set forth in said policy or which appear hereon.

The interest of the Chrysler Sales Corporation, and/or of purchasers, owners, dealers, finance companies, banks, trust compaines, persons, firms or corporations or others

having an insurable interest in said automobile are protected under this insurance with the same force and effect as if they severally accepted same, and the existence of all such interests is permitted.

Loss, if any, to be adjusted with purchaser, though to be paid subject to all conditions of this certificate only to, Name, — — —; Address: —, for account of all interests.

This insurance does not in any event cover loss or damage by confiscation of said car while used in violation of any liquor or prohibition statute.

The insurance hereunder shall be considered as excess insurance in the event of any other insurance covering the hazards hereunder insured and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted.

It is a consideration of this insurance that the within described automobile shall be continuously equipped with locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

This insurance is not subject to cancellation.

Anything herein contained to the contrary notwithstanding this insurance shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which the automobile is used (except the unlawful transportation of liquor) nor by the nature of the assured's occupation or business, nor by the location where the automobile is kept.

This insurance may be transferred by the original holder of this certificate, mailing notice of such transfer together with this certificate and \$1.50 to insurer, said insurance continuing for the unexpired term originally insured, protecting the transferee's interest, providing consent in writing of any company financing the same shall first have been obtained to such transfer.

This certificate shall not be valid until countersigned by duly authorized agent at Detroit, Michigan.

Countersigned at Detroit, Mich., (Date:) — — —, by — — —, Agent.

## Provisions Required to be Stated by Law

[fol. 57]

## Form of Certificate

The policy under which this certificate is issued is subject to the following conditions:

## Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

## Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of and civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto;

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership, or in case of transfer or termination of the interest of the Assured other than by death of the



Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

### Conditions

Limitation of Liability and Method of Determining Same.—The Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which a bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 58] way of loan of money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall

be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word “Noon” herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for

examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire, on request of the Assured or this Company such umpire shall be selected by a judge of a court of record in the County and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item, and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss of damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by parties equally.

**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company and if appraisal [fols. 59 & 59½] is demanded, then not until sixty days after an award has been made by the appraisers.

**Subrogation.**—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

**Suit Against Company.**—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commenced within twelve (12) months next after

happening of the loss; provided that where such limitation of time is prohibited by the laws of the State where this policy is issued, then and in that event no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the law of such State.

This Policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that it terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

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[fol. 60]      IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF FACTS—August 22, 1925

Proceedings in the Above entitled Cause Before Hon. Evan A. Evans, Circuit Judge, and Hon. C. Z. Luse and Hon. F. A. Geiger, District Judges, at Superior, Wisconsin, August 22, 1925.

It is understood and agreed between the parties that this stipulation shall apply to both cases (Chrysler Sales Corporation vs. W. Stanley Smith and Clark Motor Company vs. W. Stanley Smith).

It is agreed that it may be considered that the defendant has filed in the case of Clark Motor Company a verified answer containing substantially the same allegations as are contained in the verified answer in the case of Chrysler Sales Corporation which has just been served this morning.

It is also stipulated that there may be deemed to be added to the complaint in each case the matters set up in the affidavit of B. E. Hutchinson filed in each case today.

It is conceded that the Chrysler Sales Corporation is not licensed to do business in the State of Wisconsin.

Oral arguments were made following the foregoing.

[fol. 61] Reporter's certificate to foregoing paper filed January 5, 1926, omitted in printing.

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[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed August 29, 1925

The defendant in the above entitled action in answer to the bill of complaint therein, admits, alleges and denies as follows:

(1) Defendant admits the allegations in paragraph 1 of said complaint.

(2) Defendant admits the allegations in paragraph 2 of said bill of complaint.

(3) Defendant denies the allegations in paragraph 3 of said bill of complaint.

(4) Defendant admits the allegations in paragraph 4 of said bill of complaint.

(5) Defendant admits the allegations in paragraph 5 of said bill of complaint, except that he has no knowledge of the value of the business done by said plaintiff or of plaintiff's threatened loss. Defendant therefore denies such allegations and for further answer to the allegations of said paragraph, defendant admits that the plaintiff has built up [fol. 63] valuable business by the method of dealing with the Chrysler Sales Corporation and by its advantage over other sales agencies because of said method of insuring the automobiles so sold and pretending and representing that such insurance was without cost to the purchaser, but defendant alleges the fact to be that such insurance was charged and paid for in the cost of such automobiles and that such method of insurance was wholly illegal and unlawful as it was carried on without a license and in violation of the laws of Wisconsin.

(6) In answer to the allegations in paragraph six of said bill of complaint, defendant alleges that he has no information as to the methods generally practiced in the sale of automobiles and the method of payment and insurance or whether said general methods or the methods adopted by plaintiff or the Chrysler Sales Corporation were the best or most advantageous, but defendant alleges that if plaintiff or the Chrysler Sales Corporation could and did by this subterfuge and method of transacting business, transact an insurance business in the state of Wisconsin without paying any license fee or obtaining any license, in competition with other companies who paid the license fee and obtained a license, that the plaintiff and said Chrysler Sales Corporation by representing to purchasers of such automobiles, that they obtained the benefit of insurance upon their cars without any additional cost and this plaintiff and said sales company did such business without the payment of any license fee, then this defendant admits that the said plaintiff and said sales company would naturally work up a large and profitable business, but defendant alleges that the same was in violation of laws of Wisconsin and said business was so conducted for the express purpose of attempting to evade the provisions of the Wisconsin statutes which required such insurance business to be conducted through and the policies signed by a local or resident agent in Wisconsin, and a license fee to be paid and a license obtained for the conduct of such business, and that the plaintiff, as an agent of said Chrysler Sales Corporation, knew of said scheme and plan to evade the laws of Wisconsin and became and was a party to said unlawful business and aided in the violation of said law to have such policies issued and such insurance business done in the state of Wisconsin without the payment of any license fee or the issuing of any license therefor and without having such insurance contracts signed by or issued through any resident agent of Wisconsin, and that said business was so done with the knowledge, consent and approval of this plaintiff and that he profited thereby.

Defendant further alleges that the issuing of certificates to the purchasers of such automobiles in Wisconsin under the arrangement and plan of conducting such business was in effect the issuing of insurance policies and contracts

of insurance in the state of Wisconsin and were so issued in violation of the Wisconsin Statutes because no license fee was paid and no license obtained and said policies or insurance contracts were not signed by, obtained from or issued through any resident agent in Wisconsin and no records were kept of such insurance or insurance policies so issued in any office in the state of Wisconsin.

In further answer to the allegations of said paragraph defendant alleges that he does not know as to the relative advantages of obtaining insurance or carrying on an insurance business in the manner in which this was being conducted as compared with the ordinary methods used by automobile concerns and automobile agencies generally, and defendant alleges that whatever advantage might be secured by the method of insurance adopted by plaintiff and the said Chrysler Sales Corporation, it would not justify the conduct of said insurance business in violation of the laws [fol. 65] of Wisconsin and defendant alleges that a license could and should have been obtained in the manner provided by law and such insurance business conducted in a legal manner as other insurance companies and agencies have conducted their business in the state of Wisconsin and so that the same could be done under the supervision of this defendant as insurance commissioner of the state of Wisconsin.

Defendant further answering the allegations of paragraph 6 of said bill of complaint admits that so far as he knows, said Chrysler Sales Corporation was the first automobile company to work out and announce arrangement for and secure the result and conduct its business in the manner alleged, without being licensed to conduct such business in accordance with the laws of Wisconsin.

(7) In answer to the allegations in paragraph 7 of said bill of complaint, the defendant admits the execution of the policy of insurance between the Palmetto Fire Insurance Company and the Chrysler Sales Corporation and admits that said Palmetto Fire Insurance Company was duly licensed as such company in the state of Michigan and admits that it was not so licensed in the state of Wisconsin, but denies that it was not doing any business or maintaining any agencies in the state of Wisconsin and alleges the fact to be that through its agents located in the state of



Michigan, it issued a certificate of insurance on each automobile sold by the said Chrysler Sales Corporation or to customers in the state of Wisconsin, insuring such cars against damage or loss by fire or theft and that each of such certificates so issued, sent and delivered to said purchasers of automobiles in Wisconsin were and are insurance policies and contracts of insurance made and delivered in Wisconsin to residents of Wisconsin and on such automobiles in Wisconsin under and by contracts of insurance [fol. 66] and insurance policies so issued and delivered in violation of the laws of Wisconsin, because no license had been issued and no license fee paid, and such contracts of insurance or insurance policies were not signed by or issued by or through any agent of Wisconsin.

(8) Defendant admits that under the provisions of the policy contract between the Palmetto Fire Insurance Company and the Chrysler Sales Insurance Company, that the said insurance company was to issue a certificate so-called in the form attached to said bill of complaint to each purchaser of an automobile in the state of Wisconsin and defendant alleges that such certificates were so issued and that they were and are in effect an insurance contract between such insurance company and the purchasers of such cars in Wisconsin and the said Chrysler Sales Corporation and other persons as their interests might appear, and defendant alleges that while said certificates and insurance contracts or policies purport to be so issued without charge, premium or commission paid by the beneficiary or purchasers of such cars, the fact was and is that the premium, commission or consideration for such insurance contract was charged in and paid by the purchaser of such automobiles as a part of the purchase price of such cars.

Defendant admits that such certificates and contracts [fol. 67] were issued and mailed from the Michigan office to the purchasers of such cars and that they were not signed by or issued through any resident agent in Wisconsin.

(9) In answer to the allegations of paragraph 9 of the said bill of complaint, defendant admits that the insurance so made may have been obtained at a reduced rate and defendant alleges that such insurance so obtained in violation of the law and without the payment of any license



fee could be made at a lower rate than it would be if a license fee had been paid and a license obtained as provided by law. Such facts would not justify or make legal the conduct of such business in violation of the provisions of the statute and the purchasers would not have the protection furnished under the laws of Wisconsin to policy holders in licensed insurance companies. But defendant alleges that whether said method of doing business is better or worse than the method provided by the Wisconsin Statutes, or whether it is cheaper or more expensive, is no justification for the conduct of such business in violation of the provisions of the Wisconsin Statutes.

(10. In answer to the allegations of paragraph 10 of plaintiff's bill of complaint, the defendant denies that the plaintiff is not an agent of the Chrysler Sales Corporation in the method of conducting such business and defendant alleges that the said plaintiff has knowledge of and is a party to the said plan of conducting such business and the issuing of such insurance certificate contract and policy and the doing of such insurance business without a license or the payment of any license fee in the state of Wisconsin and defendant alleges that the plaintiff participated in, and became a party to and profited by such scheme and plan of insurance without the payment of a license fee and the obtaining of a license in the state of Wisconsin as provided by law.

[fol. 68] (11) In answer to the allegations of paragraph 11 of plaintiff's bill of complaint, defendant denies that neither the plaintiff nor any of the dealers selling Chrysler cars in plaintiff's territory takes any part in the writing or placing of said insurance under said Michigan contract and denies that neither the plaintiff nor any sub-dealer solicits or receives or transmits any application for insurance and defendant alleges that the plaintiff sells its cars under the pretense and representation that said cars are so insured without cost to the purchasers which is an inducement to the sale and purchase of such cars through plaintiff, and defendant alleges the fact to be that the cost of such insurance is added to and made a part of the purchase price of such automobiles and is paid for by the purchasers of such cars in Wisconsin and that they are paid and transmitted as a part of the purchase price of such cars and is

passed on to the final purchaser of the cars. Defendant denies the allegation in said paragraph that the plaintiff or any such dealer is bound to or does transmit to anybody as a premium for insurance or in any other guise, any part of such purchase price or act in any manner in behalf of or as agent of such insurance company and further denies the allegation that neither the plaintiff or any such dealer received any commission or other compensation in any form for or by virtue of the insurance protection afforded to the retail purchasers by said Michigan contract, and alleges the fact to be that said insurance is a part of the inducement and the consideration for every purchase of such automobile and the cost thereof is paid for by the purchasers of such automobiles as a part of the purchase price of such cars.

(12) Defendant admits that Chrysler cars are now being sold in Wisconsin in large numbers by and through plaintiff and admits that the purchasers of such cars and other parties interested therein are protected by such insurance [fol. 69] policies and such insurance certificates and defendant further admits that as insurance commissioner of the state of Wisconsin he has ruled and announced to the plaintiff and to said Chrysler Sales Corporation and to the public that the plan of transacting such business in Wisconsin by the issuance of such certificates of insurance or insurance contracts without the payment of a license fee and the obtaining of a license and the issuance of such insurance contract through and by a resident agent, was and is in violation of the laws of Wisconsin. Defendant admits that he has threatened to enforce such laws and to make prosecutions for the violations of the statutes of Wisconsin by such method of conducting such insurance business in the state of Wisconsin without paying a license fee and obtaining a license therefor in the same manner as all other insurance companies do, and defendant alleges that he so notified plaintiff and the said Chrysler Sales Corporation because, as he reads the laws of Wisconsin, and has been advised, it was his duty to enforce such laws and to require the payment of a license fee and the obtaining of a license by the persons so conducting such insurance business in the state of Wisconsin. Defendant alleges that he is advised that plaintiff has bought and sold a number of such auto-

mobiles pursuant to said plan and certificates of insurance were issued by said company insuring such automobiles and the purchasers and persons interested therein against loss or damage by fire or theft of said automobiles. Defendant alleges that the plaintiff participated in and profited by such contracts of insurance and insurance policies or so-called certificates and aided the said Chrysler Sales Corporation and the said insurance corporation to so conduct such insurance business in violation of the laws of the state of Wisconsin, and did so become a party to such violation in violation of the statutes of Wisconsin. Defendant admits that he has notified plaintiff and all persons who were parties to such illegal business to discontinue the same until [fol. 70] a license has been obtained in the manner provided by law and for failure so to do, prosecutions would be made of all persons participating in such illegal business and violating the statutes of Wisconsin.

Defendant further alleges that he is not to blame for the predicament plaintiff and others have gotten themselves into by reason of such method of conducting business in violation of the laws of Wisconsin, and defendant alleges that the plaintiff cannot be legally wronged or damaged by being prevented from conducting such business or becoming parties to and aiding in the conduct of such business in violation of the laws of the state of Wisconsin and profiting by the sale of automobiles under the inducement of such an insurance policy contract which was issued in violation of the laws of Wisconsin, and defendant alleges that the plaintiff's remedy, if he has any, should be against the said Chrysler Sales Corporation or said insurance company for pretending to issue such insurance certificate contracts without being licensed so to do, but defendant alleges that the plaintiff had full knowledge of all of said facts and of the law and participated in the said method of doing such business and profited thereby and profited in the saving of the cost of such license in the State of Wisconsin and is equally liable and responsible for such plan and method of conducting such insurance business in connection with such sales without any license fee having been paid to the state of Wisconsin or any license issued by the state of Wisconsin or the defendant insurance commissioner for the conduct of such business and denies that the said statutes of Wisconsin are unconstitutional and alleges that the said

laws are valid and are necessary for the proper supervision by the defendant insurance commissioner of such insurance business to prevent fraud on the people of Wisconsin and to properly regulate such insurance business in the state and to prevent irresponsible insurance companies from doing such insurance business in the state of Wisconsin and from making illegal and excessive charges for the same.

(13) In answer to the allegations of paragraph 13, defendant denies that the said statutes are in any way illegal, void or unconstitutional and alleges that such statutory provisions are legal, valid and are necessary regulations for the proper supervision of such insurance business to protect the people of Wisconsin against fraud, excessive insurance charges and irresponsible insurance companies.

Defendant further denies that the making and performance of such contracts have been wholly outside of the state of Wisconsin.

Defendant further alleges that the said scheme and plan of conducting said business was devised and is being so carried on with the express idea and for the express purpose of attempting to evade the statutes of Wisconsin and prevent the defendant insurance commissioner from supervising such insurance business and that the plaintiff is a party to and is aiding in such fraudulent and illegal insurance business and defendant alleges that such illegal business is being done by this plaintiff at the request of and is aiding such Chrysler Sales Corporation and said insurance company in carrying on their said plan and scheme for carrying on such insurance business in the state of Wisconsin without paying a license fee or obtaining a license in the manner provided by law, and in violation of the statutes of the state of Wisconsin.

(14) Defendant admits the allegations of paragraph 14 of said bill of complaint.

[fol. 72] (15) In answer to the allegations of paragraph 15 of said bill of complaint, defendant denies that the plaintiff is without remedy in the premises except in a court of equity.

Further answering said bill of complaint, defendant alleges that the Palmetto Fire Insurance Company is the real party in interest and a necessary party in said action.

For further answer to said bill of complaint, defendant alleges that such policy purports to be issued in and by virtue of the laws of Michigan, but defendant alleges that it does not conform to the requirements prescribed by either the laws of Michigan or Wisconsin and that the whole plan and scheme is without authority of either state and is illegal, unlawful and void.

For further answer to said bill of complaint, defendant alleges that this plaintiff and other sales agents in pursuance to and in carrying on such scheme of selling cars, are selling insurance and insurance contracts in Wisconsin without a license and in violation of the insurance laws of Wisconsin.

Defendant alleges that said method, plan and scheme of conducting, carrying on and transacting such business in Wisconsin and other states in such manner was and is illegal and the results of and is an illegal conspiracy by and between plaintiff, the said Palmetto Fire Insurance Company, the Chrysler Sales Corporation and the distributors and purchasers of such automobiles in Wisconsin, to evade the laws of Wisconsin and that such business is being so carried on in Wisconsin in accordance with such illegal conspiracy and plan and in violation and defiance of the laws of Wisconsin and is unlawful.

Defendant further alleges that the plaintiff in this suit is not a citizen of the United States nor of any state in the [fol. 73] United States and is, therefore, not entitled to the rights of citizens as guaranteed by the Fourteenth Amendment to the constitution of the United States.

For further answer to said bill of complaint, defendant denies each and every allegation therein not herein admitted.

Wherefore, Defendant prays that no temporary injunction be issued in this action pending the trial and disposition of the same and that said action be dismissed with costs to defendant.

Herman L. Ekern, Attorney General; T. L. McIntosh, Assistant Attorney General, Attorneys for Defendant.

[fols. 74 & 74½] *Duly sworn to by W. Stanley Smith. Jurat omitted in printing.*

Due and personal service of the within Answer admitted this 26th day of August 1925.

Richmond, Jackman, Wilkie and Toebaas, Attorneys  
for Plaintiff.

[File endorsement omitted.]

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[fol. 75] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO APPEAR FOR HEARING AND TEMPORARY RESTRAIN-  
ING ORDER—Filed August 5, 1925

Plaintiff having applied for a temporary injunction restraining defendant as prayed in the duly verified bill of complaint and it appearing that such injunction, if granted, may suspend or restrain the enforcement of a state law by restraining the action of a state officer, on the ground of the unconstitutionality of said statutes, if such statutes should be construed as claimed by defendant, and if said statutes prohibit the acts and practices of plaintiff and customers of plaintiff as set out in said complaint, and it appearing from specific facts alleged in said verified bill that immediate and irreparable loss and damage will result to applicant, the plaintiff herein, before the matter can be heard on notice, and it appearing from said complaint that plaintiff is prima facie entitled to interlocutory injunction as prayed, and it further appearing that the defendant is issuing declarations and statements to the effect that plaintiff and plaintiff's customers are violating the criminal and civil laws of Wisconsin and are subjecting themselves to heavy fines, forfeitures and penalties; and that said defendant is threatening to immediately cause the arrest and prosecution of plaintiff and other distributors and dealers selling Chrysler cars in Wisconsin and that said declarations, statements and threats have already had serious effect on, and are causing [fol. 76] irreparable injury to plaintiff's property and business, and that such arrest and prosecution would cause irreparable injury to plaintiff and plaintiff's property before any hearing on notice can be had in this matter by caus-

ing great loss of customers, dealers and good will and disruption of sales organization.

Now therefore, on motion of plaintiff, it is ordered, that defendant appear on August 22nd, 1925, at 10:00 o'clock a. m., or as soon thereafter as counsel can be heard, or at such other times as may hereafter be duly set as the time for the hearing of said application, at the court room of the above named court, in Superior, Wisconsin, and there show cause why the interlocutory injunction in said bill of complaint prayed for should not issue and I hereby call to my assistance to hear and determine the application, two other judges, to-wit: Hon. Evan A. Evans, Circuit Judge and Hon. F. A. Geiger, District Judge.

Further ordered that a copy of the Bill of Complaint be served on defendant at the time of the service of this order.

Further ordered that at least five days' notice of said hearing on application for temporary injunction be given to the Governor and to the Attorney General of the State of Wisconsin and to the defendant in this action.

Further ordered that for the reasons and on the grounds hereinbefore stated, a temporary restraining order is hereby granted without notice, to be in effect only until further order of the court and in any event to be in effect no longer than the time of the hearing and determination of said application for temporary injunction. The restraining order shall not be effective until there is filed with the clerk a bond executed by sureties approved by the clerk in the sum of \$1,000.00 conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who [fols. 77 & 77½] may be found to have been wrongfully restrained or enjoined thereby. A copy of said bond shall be served with the service of this order.

Therefore it is ordered that until the further order of this court, or until the hearing and determination of said application for temporary injunction, defendant and his deputies, agents and employes, and all persons acting under him, be and they are hereby restrained and enjoined from bringing or causing to be brought, or threatening to bring or cause to be brought any prosecutions or actions or proceedings for recovery of penalties or forfeitures against plaintiff, or against any dealers in or distributors of Chrysler Cars in Wisconsin, or the servants, agents or employes

of them or any of them, based on or purporting to be based on or by reason of the contract of insurance made between Chrysler Sales Corporation and Palmetto Fire Insurance Company, dated June 16, 1925, whereby purchasers at retail of Chrysler cars in Wisconsin, and other parts of the United States, and other persons interested in said cars are protected in respect to loss on said cars by fire or theft, or based on or purporting to be based on or by reason of the sales of Chrysler car in Wisconsin, and the collection of the full purchase price thereof, including delivery and other charges according to the present method of selling said cars in Wisconsin or by reason of the protection afforded purchasers of said cars in Wisconsin under said contract of insurance and from publishing or circulating statements that plaintiff or the dealers in or distributors of Chrysler cars in Wisconsin are violating the Wisconsin law or are acting as insurance agents contrary to law or otherwise.

Dated August 3rd, 1925.

C. Z. Lase, District Judge.

[fol. 78] [File endorsement omitted.]

Marshal's return on service of temporary restraining order omitted in printing.

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[fols. 79-81½] Notice of hearing on motion for temporary injunction and service omitted in printing.

[fols. 82 & 82½] Application for hearing and motion for temporary restraining order, filed August 3, 1925, omitted in printing.

[fols. 83-84½] Bond on restraining order for \$1,000.00 approved; omitted in printing.



[fols. 85 & 85<sup>1</sup>/<sub>2</sub>] IN UNITED STATES DISTRICT COURT

[Title omitted]

Before Circuit Judge Evan A. Evans and District Judges  
F. A. Geiger and C. Z. Luse, on Application for Preliminary Injunction

OPINION ON APPLICATION FOR PRELIMINARY INJUNCTION—  
Filed November 18, 1925

PER CURIAM:

It being considered that the questions involved in this suit are substantially no different from those involved in Chrysler Sales Corporation, Plaintiff, vs. W. Stanley Smith, as Commissioner of Insurance, Defendant, in which last mentioned suit an opinion is this day filed, the application of the plaintiff for preliminary injunction in this suit will be denied upon the grounds stated in the opinion aforesaid.

It is so ordered.

Evan A. Evans, Circuit Judge. F. A. Geiger, C. Z.  
Luse, District Judges.

Filed November 18, 1925, at 10 A. M. Herbert C. Hale,  
Clerk, by C. W. Bishop, Deputy.

[fol. 86] IN UNITED STATES DISTRICT COURT

[Title omitted]

Hearing on Application for Preliminary Injunction, Before  
Evans, Circuit Judge, and Geiger and Luse, District  
Judges

OPINION—Filed November 18, 1925

LUSE, District Judge:

Complainant, a Michigan corporation, seeks to enjoin defendant from publicly asserting that insurance issued by the Palmetto Fire Insurance Company, a corporation of South Carolina, to Wisconsin residents owning Chrysler automo-

biles sold in Wisconsin, is so issued contrary to the laws of Wisconsin and from threatening to prosecute Wisconsin dealers in Chrysler cars for violating Wisconsin statutes regulating the insurance business within the state to the irreparable damage to plaintiff's business in the sale of Chrysler cars in Wisconsin. Complainant avers that the Wisconsin statutes, properly construed, do not apply to the situation and if they do, they are unconstitutional upon various grounds and particularly under the due process clause of the Fourteenth Amendment. The application was heard on the pleadings, supplemented by affidavits.

Prominent among the state statutes which merit consideration, are the following:

Sec. 201.41 (1), Wis. Sts.:

"No insurance corporation shall transact any insurance business in this state without first having paid the license [fol. 87] fees and obtained the license therefor as required by law."

By sub-section 2 of that section each such company is required to file a statement that it desires and will accept a license within the state, revocable in case of violation of law or certain impairment of its capital; appoint the Commissioner of Insurance its attorney in fact for service of process. The section also requires the insurer to file a copy of its charter and evidence that it has a certain capital and has deposited either in this state or where domestic a certain amount in approved securities.

Sec. 201.44:

"(1). No policy of insurance shall be issued or delivered in this state by any company, except through an agent who shall be a resident of this state and hold a certificate of authority under section 209.04, for the kind of insurance effected by such policy.

"(5). Any company or person soliciting or placing insurance without complying with this section shall, in addition to other penalties provided by law, be liable personally upon such policy or contract of insurance to the same extent as the company issuing the same."

A penalty is provided for violation of this section.

## Sec. 209.04:

“(1). No person, officer, or broker, agent or subagent of any insurance corporation of any kind required to pay any tax or license fee to the state shall act or aid in any manner in transacting the business of or with such corporation in placing risks or in collecting any premiums or assessments or effecting insurance therein, without first procuring from the insurance corporation a certificate of authority; nor shall any such person officer, broker, agent, or subagent, after such certificate shall have expired, or after revocation by the commissioner of insurance of such certificate or of the license of such corporation and until a new certificate or license shall have been issued to him, do or perform any such act for or in behalf of any insurance corporation. The exceptions herein shall not apply to mutual insurance corporations or fraternal societies not maintaining a lodge system which corporations or societies issue only policies of health or accident insurance or both.

“(4). Any person violating the provisions of this section shall be punished by a fine of not more than five hundred dollars for each offense. Any company violating subsection [fol. 88] (2) of this section shall pay five times the amount of fees upon each license included in such violation.

## Sec. 209.05:

“Every person or member of a firm or corporation who solicits insurance on behalf of any insurance corporation or person desiring insurance of any kind, or transmits an application for a policy of insurance, other than for himself, to or from any such corporation, or who makes any contract for insurance, or collects any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance corporation, or advertises to do any such thing, shall be held to be an agent of such corporation to all intents and purposes, unless it can be shown that he received no compensation for such services. This section shall not apply to agents of licensed fraternal beneficiary societies, or mutual fire insurance companies of this state except those organized under sections 201.02, 201.04 and 201.16.”

Sec. 348.488:

"Any unauthorized insurance company or other unauthorized insurer which shall hereafter take or receive any application for insurance in this state, or shall receive or collect a premium on any part thereof for such insurance, shall be punished by a fine of not more than five thousand dollars. Any officer, agent, solicitor, or broker, or other employe of any unauthorized insurance company or other unauthorized insurer who shall take or receive any application for insurance in this state, or shall receive or collect a premium or any part thereof for such insurance, shall be guilty of a felony, and shall be punished by a fine of not more than five hundred dollars, or imprisonment in the state penitentiary for one year, or by both such fine and imprisonment."

By virtue of these provisions of the Wisconsin law, among others, defendant claims that the Palmetto Fire Insurance Company and the Wisconsin dealers in Chrysler cars are violating the laws of Wisconsin and are amenable thereto as he has claimed.

The facts disclosed by the record or reasonably inferable therefrom are as follows:

Complainant is a Michigan corporation engaged in buying all of the automobiles manufactured by the Chrysler Motor Corporation and selling them at wholesale throughout the United States to distributors and dealers of whom there are some three thousand in the country and one hundred thirty in the state of Wisconsin. It has established this sales organization at great expense and its success depends in part on its ability to retain these distributors and dealers for the continuance of sales, which during the first half of 1925 exceeded one half million dollars in the state of Wisconsin. It appears that a large percentage of automobiles sold at retail in this country are sold on the deferred payment plan, the deferred payments being evidenced by promissory notes, secured by lien on the car sold, and usually assigned by the dealer to some bank or finance company which requires that insurance against fire and theft be taken out for the protection of the owner and itself from loss through those hazards. The result, so complainant alleges, has been that such banks or finance

companies have been required to maintain organizations to collect deferred payments, watch the cars against improper disposition before final payment, etc., with the further result that the cost of financing, which is invariably borne by the retail purchaser, is not uniform, usually high and often excessive. One element making for uniformity and cheapness in financing is cheap insurance and to secure that for the benefit of the retail purchasers, complainant, on June 16, 1925, entered into a contract, called in the bill an "open policy," with the Palmetto Fire Insurance Company, a South Carolina corporation, not admitted to do business in Wisconsin, and Commercial Credit Company, a Delaware corporation, the legal effect of which, together with an interpretation of the acts of the Wisconsin dealers thereunder, present the main questions in controversy. A new contract was entered into between the parties on Aug. 4, 1925, the day after this suit was commenced, modifying and clarifying to some extent the contract of June 16, but making no substantial change in the nature of the questions presented.

The purpose of the contract of June 16, is stated therein as follows:

[fol. 90] "Chrysler desires to increase the retail sale of Chrysler cars and to obtain for dealers a uniform maximum rate for financing retail sales and to provide insurance at a uniform maximum rate throughout the entire United States for the benefit of purchaser and/or other parties mentioned in the policy and certificates as their respective interests may appear on each Chrysler car purchased at retail. Chrysler proposes to advertise throughout the United States the benefits resulting to purchasers from insurance under policy and certificates issued hereunder. Commercial Credit desires to obtain so far as possible the financing of the retail sales of Chrysler cars. Insurer desires to obtain insurance in respect to all Chrysler cars sold and leased and delivered at retail to purchasers by dealers throughout the United States during the term of this policy."

By the terms of the contract Palmetto Fire Insurance Company insures "Chrysler Sales Corporation and/or for account of whom it may concern, as specified, against loss by fire or theft to the automobiles described for a period commencing at noon July 1, 1925, and ending at noon July

1, 1926, but all certificates issued thereunder remain "in full force and effect for the term specified in such certificates." The amount of premium is not stated except "as specified," evidently referring to an undisclosed collateral agreement. Usual warranties as to the occupation or business of the assured, the uses to which the automobile will be put, and the place where same is kept, are waived by the insurer. The existence of any lien or mortgage does not vitiate the insurance. Liability of the insurer is limited to the actual cash value of the property at the time of any loss or damage, which loss or damage is to be ascertained or estimated with proper deduction for depreciation, the usual provision with regard to proof of loss within sixty days is present and likewise a provision for appraisal of the amount of loss or damage in case the assured and the insurer shall fail to agree thereon. Coverage is for 100% of the list price of each Chrysler car, F. O. B. Detroit, on date of purchase at retail, limited, however, as already indicated to the actual cash value at the time of [fol. 91] loss; coverage under the contract and under certificates to be issued is provided to be "automatically effective from the date on which (during the term of this policy) each purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, whichever shall be the earlier, and shall attend in respect to such Chrysler car for a period of twelve months." The purchaser is defined as one purchasing or agreeing to purchase Chrysler cars at retail. No car is insured which on July 1, 1925, was in the possession of or in transit to any dealer or distributor unless reported by Chrysler Sales Corporation to the insurer. The insurer is required to issue certificates to any purchaser at retail in the form attached to the policy and the insurance evidenced by the contract and certificate is not subject to cancellation by either party. If the automobiles are financed, that is, sold on deferred payments secured by lien upon the car, a duplicate of such certificate is furnished to the finance companies financing the purchase. It is agreed, however, that all cars shall be automatically covered as provided in the contract notwithstanding the failure or omission to apply for or issue a certificate or the failure to report to the insurer any car as required by the policy. In cases where the purchaser takes

out other insurance upon his car and the Palmetto Fire Insurance Company disclaims liability on that account, coverage under the contract is provided to operate as excess insurance, not to apply to any loss until recovery from such other insurance shall have been exhausted. The Chrysler Company is obliged to send original detailed reports to Commercial Credit Corporation and a duplicate thereof to the insurer of Chrysler cars in the possession or in transit to its distributors and/or dealers and unsold on July 1, 1925, upon which insurance is desired under the contract [fol. 92] tract. It is also required to send each month on or before the 15th day reports to the same parties of the cars shipped to its dealers and distributors throughout the United States during the preceding calendar month. The agreed premiums are to be paid by Chrysler Sales Corporation for the insurance provided for and are paid by the Chrysler Corporation to the Commercial Credit Corporation or any insurance broker designated by the latter on or before the 15th day of each month for all Chrysler cars reported by the distributors and dealers of the Chrysler Sales Corporation as sold and/or leased during the preceding month and which are insured, and a report of such cars in detail is required to accompany such remittance. Commercial Credit Corporation is required to remit or cause the insurance brokers designated by it to remit the insurance premiums on or before the 25th day of each month to the agents of the Palmetto Fire Insurance Company at Baltimore, Maryland. Commercial Credit Corporation guarantees the payment of such premiums. Payment of all losses claimed are to be made

"to purchaser unless the purchase of any Chrysler car has been financed, in which case payment of all losses shall be made to Commercial Credit, Affiliated Companies or other finance companies or dealers (meaning all who have advanced deferred payments on behalf of the purchaser and taken security therefor) financing the same for the account of all parties as their respective interests may appear."

The form of certificate attached to the contract recites in effect that pursuant to the contract between the Chrysler Sales Corporation and the Palmetto Fire Insurance Company, the new Chrysler car sold and delivered to the purchaser whose address is given and which car is specifically

described, is insured against loss or damage from the perils insured against for a period of one year, with specific dates, for a sum stated, being the list price of the car including standard factory equipment, F. O. B. Detroit. The certificate [fol. 93] also asserts that the interests of the Chrysler Sales Corporation and/or of purchasers, owners, dealers, persons, etc., or others having an insurable interest, are protected with the same force and effect as if they severally accepted the same. The loss, if any, is to be adjusted with the purchaser but to be paid subject to all conditions of this certificate only to the person named in the certificate who holds the lien or mortgage upon the car "for account of all interests". It is provided in the certificate that it shall not be valid until countersigned by the duly authorized agent at Detroit, Michigan.

It is averred by complainant that whether a Chrysler car is sold at retail for cash or on time, the price is the same except for the charge made for financing the deferred payments which have heretofore varied but which under the plan devised by complainant has become 8% upon the unpaid balance if the sale is on time. Nor may purchaser obtain his car at a less price whether or not he desires the protection of such insurance. The practice with respect to the sale of Chrysler cars is that the Chrysler Sales Corporation from time to time has fixed the list price of its cars and sells them to its distributors for a cash price computed as follows: List price, less a given discount, plus war tax and certain delivery charges. Freight is paid by the distributor. In computing the discount, there is not included the war tax or the delivery charge. On July 1, 1925, additions were made to the delivery charge on all models of Chrysler cars. The complaint, however, does not disclose whether this increase in the delivery charge corresponded in amount with the cost to the Chrysler Sales Corporation of the insurance premium which it would pay under the Palmetto contract or not but the inference is unmistakable that such was the fact. The distributor sells to the dealer on the same basis as the distributor has [fol. 94] bought but allows a smaller discount on the list price. The dealer in turn sells to the retail purchaser at a price equal to the list price, plus freight, war tax and delivery charge. The retail dealer reports to the com-



plainant the name of the purchaser, date of sale, motor number, style, etc., on retail sales made and also the name of the person or corporation financing the purchase if made on time. Complainant notifies the agent at Detroit, Michigan, of the insurance company and he mails the certificate from his office in Detroit to the purchaser and duplicates to others who to his knowledge may have an interest in the car.

Complainant alleges, while defendant denies, that the distributors of and dealers in Chrysler cars are in no way agents of the plaintiff and that no dealer or distributor takes any part in writing or placing or in the payment for insurance under the Michigan contract. Nor, says complainant, does the distributor or dealer solicit, demand, receive or transmit any premium. The contention of the complainant is that as to those cars shipped and to be sold at retail in Wisconsin, as is true throughout the United States, they become the property of the dealer, for which he has paid a stated price and which he sells in Wisconsin at a stated price as his own property and not as the agent for any one and that the insurance becomes effective not by virtue of anything the dealer does but by virtue of the contract of June 16 last entered into in Michigan and that the insurance which becomes effective in the hands of the retail purchaser in Wisconsin becomes effective solely by virtue of the Michigan contract and that the sale of the cars in Wisconsin by the dealers cannot be properly construed as effecting any insurance which it claims becomes automatically effective by virtue of the Michigan contract. Most of these contentions are asserted as facts in the bill and denied by the defendant and are of course to be resolved [fol. 95] by a true construction and interpretation of the contract and the course of business thereunder, with the legitimate inferences to be made therefrom.

One of the important details of this contract and plan is that the effective date of the insurance is postponed until a car is sold at retail and until title has passed from, not only complainant, but, its distributors and dealers, and only takes effect upon a sale at retail and covers only the loss sustained by the retail purchaser and lien claimants whose claims grow out of the transaction of retail sale. When so sold, complainant claims, the insurance becomes automatically effective, by virtue of the Michigan contract.

Plainly the theory of complainant is that this insurance is something that attaches to and follows an automobile upon its course through the market, as though a part or accessory and that the dealer who sells the car has nothing to do with the insurance item,—he merely sells the car with all its equipment including the insurance. But this idea is erroneous for, at least, two reasons: (1) The insurance never had effective existence until the sale at retail, by its very terms, or, as it may differently be stated, it is only to be made operative by an act of the retail dealer and (2) the legal concept of insurance is that in the absence of special circumstances it does not attach to property but to persons. As said by Story, J., in *Carpenter v. Providence Co.*, 16 Peters, 495, 503, quoting Lord Hardwick:

“The society are to make satisfaction in case of any loss by fire. To whom, or for what loss, are they to make satisfaction? Why! to the person injured, and for the loss he may have sustained, for it cannot properly be called insuring the thing, for there is no possibility of doing it, and therefore must mean insuring the person from damage.”

A similar thought underlies the decision in *Paul v. Virginia*, 8 Wall. 168, wherein Justice Field says, referring to insurance contracts:

“These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one state to another and then put up for sale.”

And this thought has withstood numerous assaults as is indicated in *N. Y. Life Ins. Co. v. Deer Lodge County*, 231 U. S. 495. And so we conclude that the insurance feature of the sales of Chrysler cars in Wisconsin may not be treated as an appendage or bit of equipment of small relative cost, which passes with the transfer of the car, but must be approached as a contract between persons, the insurer and the insured, and in so far as an insurance results it must be viewed as a thing apart and distinct from the cars sold.

What is the effect of the postponement of the operative

effect of the contract? In considering this question it should be borne in mind that we are not concerned in this suit with the validity of the contract as such, but rather, with the question of whether or not the insurance eventually effected under it is so effected in Wisconsin as to give the regulatory statutes of that state, opportunity to operate thereon.

The course of business so far as a Wisconsin dealer is concerned is that he sells a car located in Wisconsin to a Wisconsin purchaser and offers as an incident to the sale, the insurance in question; the car including the insurance, is accepted,—the purchaser pays the dealer for the car, including the insurance premium, and this all occurs between Wisconsin residents with reference to property located in Wisconsin. By the sale the dealer thus fixes the term of the insurance which runs for one year from the date of retail sale; he normally reports the sale to complainant who in turn reports it to the insurer and accom-[fol. 97] panies the report with a remittance of the premium. If the retail purchase is upon deferred payments, the dealer and purchaser arrange for some one to finance it, and he becomes a beneficiary, selected ordinarily but not necessarily in Wisconsin and finally a certificate is mailed at Detroit to the Wisconsin insured. The dealer in Wisconsin, clearly does these things in Wisconsin: 1. He sells the car, including the insurance; 2. He collects the price, including the premium (that he does not remit it, is of small moment, having already advanced it, receiving nothing for it); 3. He fixes the term of the insurance; 4. He selects the beneficiaries—purchaser and financier; 5. He notifies complainant of these details by mail. All these things, except the last are essentials to the completion of the insurance contract and bring it into actual existence and occur in Wisconsin, between residents of that state, the dealer acting with authority under the Michigan contract. On the oral argument a certificate said to be typical of those delivered to purchasers, was handed to the court, which bore the endorsement, "any Chrysler dealer will notify purchaser to whom notice of any such loss should be given." We are now informed that such endorsement is eliminated from all certificates which are being sent out. The endorsement quoted above was slightly confirmatory,

but its elimination does not detract from the relationship of the dealers to the insurance as the whole plan discloses it.

Having these facts in mind and the thought that insurance is a matter of contract between persons, we are confronted immediately by the fact that the Michigan contract is not an insurance in praesenti, but rather a contract to insure in the future. It is not intended to indemnify Chrysler, nor its distributors, nor dealers, though the property successively passes through them in unqualified [fol. 98] ownership. Properly construed, we deem the contract one for future insurance to indemnify the retail purchasers and through them those who finance the retail purchasers, all to be provided by using the Chrysler organization of distributors and dealers to secure the adoption of the insurance by the retail purchasers and lien holders. How, then, can it be said that what the dealer does in Wisconsin are mere collateral acts, where they operate to bring the insurance into effect for the first time—give it life—and only by those acts are those essentials of insurance, identity of insured, identity of property, term of the risk and payment of premium, consummated? When, in addition, it is considered that in effect the Chrysler dealers act as solicitors of insurance as an incident to the sale of automobiles, we have no doubt that the insurance received by each retail purchaser in Wisconsin is in fact consummated in that state. The contention of counsel that the insurance is effective whether the retail purchaser wishes it or not, is erroneous, we think, and based on the theory that the insurance is the subject of barter and sale and passes as does the wind-shield wiper, as an accessory, from the dealer to the purchaser. The analogy is incomplete, for reasons already stated, and also because the dealer never has the insurance to pass, but rather it springs into existence upon its acceptance by the purchaser. That such acceptance is practically assured by the practice of demanding its cost regardless of whether the purchaser desires the insurance or not, does not alter the fact. In our opinion, the insurance on cars sold by Wisconsin dealers, in Wisconsin to Wisconsin purchasers, is consummated within that state.

Among other facts which tend to support this conclusion, it may be borne in mind that by the Michigan contract it is provided that "insurer shall issue certificates to purchaser

[fol. 99] substantially in the form attached," while the course of business is to mail such certificate to the retail purchaser. It is evident that it is deemed of some importance that the retail purchaser receive the certificate as his visible evidence of indemnity and the course of business adopted indicates that delivery of the same to him is made in Wisconsin through the postal service as the agent of the insurer. Again, while it is contended that the retail dealer does not sustain an agency relation to any one and sells the car as his own property, the whole plan confidently assumes that the dealer will sell the automobile at retail and collect the price designated as the list price together with the freight and delivery charges, and more to the point, it is assumed that the retail dealer will make report of the sale of the car at retail for the purpose of furnishing the basis not only for the issuance of a certificate to the purchaser, but also—and this is no doubt of some importance to the insurer—for the purpose of determining the premiums which Chrysler shall be required to pay to the insurer.

We have not overlooked the fact that all of these acts performed by the dealer in Wisconsin are to him no doubt mere incidents in the larger transaction of selling an automobile, even though he stresses, as he probably does, the insurance feature in his "sales talk" nevertheless this does not make the insurance feature any the less an item which the state may, and in common with most, if not all, has seen fit to regulate.

Nor do we believe that the fact that the Michigan contract is written in favor of "Chrysler Sales Corporation and or for account of whom it may concern," alters the conclusion indicated. The fact that the contract in question postpones the existence of any insurance until after the transactions in Wisconsin above outlined, differentiate [fol. 100] the contract here from any in the cases called to our attention or which an independent search has revealed. Even in those cases where insurance in praesenti exists and a change of ownership occurs, the insurance is enforced on behalf of those intended by that phrase "provided the person who ordered it had the required authority from the former, or they subsequently adopted it." *Hooper v. Robinson*, 98 U. S. 536; *Hagen vs. Scottish Ins. Co.*, 186 U. S. 423; *Waring vs. Indemnity Co.*, 45 N. Y. 606. While

it is held that adoption may be shown informally and may occur even after loss, it is clear that in those cases operative insurance did not await the selection and assent of one of those intended by the phrase "whom it may concern," nor was the term of the effective insurance fixed by the transaction with him. We do not intend to imply that there are no other serious questions presented by the contract and facts here, but laying those questions aside, we think the above considerations are sufficient to repel the idea that the phrase "whom it may concern" materially affects the question before us.

Enough has already been said, we think, to indicate that our view of the case at bar clearly distinguishes it from the case of *Allgeyer vs. Louisiana*, 165 U. S. 578, in which no question of agency was involved and wherein it was held the contract was "made outside of the state, to be performed outside of the state, although the subject was property temporarily within the state." P. 592. In the instant case the contract, and the only contract which actually affords effective insurance, is made in Wisconsin, to be performed there (*Lumbermen's Ins. Co. vs. Meyer*, 197 U. S. 407, P. 416) and the subject is property located there. Nor is *Minnesota Association vs. Bonn*, 261 U. S. 140, in point for there the members who solicited new members were without authority to obligate it. In *Aetna Life Insur-[fol. 101] ance Co. vs. Dumker*, 266 U. S. 389, the Tennessee contract was in full force before the assured removed to Texas and what transpired there after was in fulfillment of the completely effective Tennessee contract. Nor are we dealing here with a case where a resident of Wisconsin has in another state entered into a contract with a foreign corporation, so that the laws of Wisconsin need be given extraterritorial force as was condemned in *N. Y. Life Ins. Co. vs. Head*, 234 U. S. 149. On the other hand our view is that notwithstanding it is quite different in its facts, the instant case comes squarely within the principles of *Hooper vs. California*, 155 U. S. 648, *Nutting vs. Mass.*, 183 U. S. 553, and *Penna. Lumbermen's Ins. Co. vs. Meyer*, 197 U. S. 407.

Our attention has been called to the decisions of the United States District Court for the southern district of Ohio and the United States District Court for the southern district of New York, both yet unreported, and rendered in

actions brought by the Palmetto Fire Insurance Company to enjoin the revocation of its licenses to do business in the states of Ohio and New York by the respective superintendents of those states. In the Ohio case it was held that the statute of that state prohibiting an insurance company legally authorized to transact business in Ohio from writing, placing or causing to be written or placed, insurance upon property situated or located in that state, except through a legally authorized agent there in, who should countersign all policies and enter the payment of the premium upon his record, was a valid law so far as insurance corporations who had taken out licenses were concerned and that such a license might properly be revoked if the statute was violated. The question there passed upon is quite clearly not involved in the instant case. In the New York case the defendant superintendent of insurance was enjoined from revoking the license of the Palmetto Fire Insurance Company upon the ground, as we read the decision, that the New York statutes do not prohibit the transactions involved and that the transactions being valid in Michigan, and not made invalid in New York, no legal cause for cancellation of the license existed. In that opinion it is said:

"The policy which is issued at Detroit, Michigan, under the plan insures the Chrysler Sales Corporation on cars sold together with others who may have an interest therein, including the ultimate purchaser in New York, who pays no premium but can take advantage of the insurance if he chooses to avail himself of it. No renewal of the policy is allowed. It amounts to a gift of insurance for one year if the ultimate purchaser of a Chrysler car sees fit to avail himself of it."

It is apparent from a comparison of the foregoing quotation with what we have said that the New York court has arrived at a very different interpretation and construction of the contract and the course of business under it, from ours. That opinion has caused us to reexamine the grounds of our own construction, but we find ourselves unable to subscribe to that part of the opinion which underlies the conclusion that the insurance provided under the plan for the retail purchaser is a gift which arises out of a Michigan



transaction. With all due deference we adhere to the interpretation of the contract and the course of business thereunder, hereinbefore outlined.

The business done and to be done in Wisconsin under the plan in question, in our opinion, constitutes the transacting of business within the state and the Palmetto Company is one of those validly required to take out and pay for a license under Sec. 201.41 (1) of the Wisconsin statutes, quoted above.

It is contended that the Chrysler dealers are not agents of the insurance company and are not within the terms of the penal statutes under which defendant threatens prosecutions. Granting that they are not agents in the conventional sense, and probably do not regard themselves as [fol. 103] such, nevertheless that question must be determined by what they do in fact, its effect, whom they do it for and by what authority, and by such test they clearly act within Wisconsin to effect insurance for purchasers upon automobiles, on behalf of the Palmetto Company with authority. Granting, further, that such statutes must be strictly construed, we have no hesitancy in concluding that the Chrysler dealers in Wisconsin operating under this plan bring themselves within both the letter and spirit of Sec. 209.04 Wis. Sts. The word "person" in the section is not to be treated as surplusage and must be held to include those who, though not officers, brokers, agents or sub-agents in the legal sense, in an analogous capacity, perform for the insurance company the forbidden acts of aiding "in any manner in transacting the business of or with such corporation (one required to pay a license) in placing risks or in collecting any premiums or assessments or effecting insurance therein."

Whether other Wisconsin statutes validly apply is not necessary to decide, for from what has already been said it follows that the application for a preliminary injunction must be denied.

It is so ordered.

Evan A. Evans, Circuit Judge. F. A. Geiger, District Judge. C. Z. Luse, District Judge.

[File endorsement omitted.]



[fol. 104] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—November 18, 1925

The above entitled matter having been considered at a hearing heretofore held before the Hon. Evan A. Evans, Circuit Judge, Hon. F. A. Geiger, and Hon. C. Z. Luse, District Judges in the matter of Chrysler Sales Corporation vs. W. Stanley Smith as Commissioner of Insurance for the State of Wisconsin, on its application for preliminary Injunction:

In open Court, the Honorable C. Z. Luse, District Judge presiding it was ordered that the application for preliminary injunction in this suit be denied upon the grounds stated in the opinion as filed in the case of Chrysler Sales Corporation vs. W. Stanley Smith, above referred to.

Plaintiff duly excepts and exceptions allowed.

I hereby certify the above to be a true copy of the original entry on the minutes of the court proceedings in the United States District Court for the Western District of Wisconsin, at Superior, on the 18th day of November, 1925.

Herbert C. Hale, Clerk, by C. W. Bishop, Deputy.

[fol. 105] Clerk's return omitted in printing.

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[fol. 106] Clerk's certificate to foregoing transcript omitted in printing.

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[fols. 107 & 107½] Citation, in usual form, showing service on Herman L. Ekern, filed December 16, 1925, omitted in printing.

[fol. 108] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR

Plaintiff in connection with petition for appeal herein, presents and files therewith its assignment of errors, as to which matters and things it says that the order entered herein on the 18th day of November, 1925 is erroneous, to-wit:

First. That the court erred in refusing interlocutory injunction as prayed.

Second. That the court erred in refusing to hold invalid as in violation of the 14th Amendment to the Constitution of the United States and the full faith and credit clause of said Constitution (Article IV, Sec. 1) and impairment of contract clause (Article I, Section 10) of said Constitution, Section 203.07 Wisconsin Statutes 1923 declaring that all fire insurance contracts on property in Wisconsin shall be held to be made and effected within Wisconsin and prohibiting the making of any such contracts on property in Wisconsin directly or indirectly by any unlicensed company.

Third. That the court erred in holding that distributors of and dealers in Chrysler automobiles in Wisconsin, including plaintiff and others similarly situated, selling in Wisconsin automobiles the purchasers of which are protected by insurance contract effected in Michigan between the Chrysler Sales Corporation and Palmetto Fire Insurance Company as set out in complaint and doing acts incidental to such sales are violating the penal provisions of Wisconsin Statutes and particularly Section 209.04 Wisconsin Statutes 1923.

Fourth. That the court erred in holding that by virtue of the contract of insurance between Chrysler Sales Corporation and Palmetto Fire Insurance Company made in Michigan and the sale of Chrysler cars in Wisconsin by dealers in and distributors of Chrysler cars in Wisconsin (including plaintiff and others similarly situated) and acts incidental thereto as set out in complaint, said Palmetto Fire Insurance Company is transacting an insurance busi-

ness in Wisconsin and is subject to the tax provided for by Section 76.33 Wisconsin Statutes 1923 as amended by Chapter 372, Wisconsin Laws of 1925 and that said statute so imposing such tax is valid and not in violation of the Constitution of the United States.

Fifth. That the court erred in holding that dealers in and distributors of Chrysler cars in Wisconsin, including plaintiff and others similarly situated, are agents of and for the Palmetto Fire Insurance Company in respect to business of that company transacted in the State of Wisconsin.

Sixth. That the court erred in refusing to hold that Section 457.5 Wisconsin Statutes 1923 as amended by Chapter 375 Wisconsin Laws 1925 prohibiting any officer, agent, solicitor or broker or other employes of any unauthorized insurer from taking or receiving an application for insurance in Wisconsin or receiving or collecting premiums does not apply to or prohibit any of the acts of dealers in or distributors of Chrysler cars, including plaintiff and others similarly situated as described in complaint.

Seventh. That the court erred in refusing to hold that Section 209.04 Wisconsin Statutes 1923 has no application to dealers in and distributors of Chrysler automobiles in [fol. 110] Wisconsin, including plaintiff and others similarly situated.

Eighth. That the court erred in refusing to hold that Section 201.44 Wisconsin Statutes 1923 providing that no policy of insurance shall be issued or delivered in Wisconsin except through a licensed resident agent does not apply to acts of dealers in and distributors of Chrysler cars in Wisconsin, including plaintiff and others similarly situated.

Ninth. That the court erred in holding that by virtue of the acts and transactions of dealers in and distributors of Chrysler cars in Wisconsin (including plaintiff and others similarly situated) described in complaint and contract made in Michigan between Chrysler Sales Corporation and Palmetto Fire Insurance Company and the operation of said contract said Palmetto Fire Insurance Company is unlawfully transacting an insurance business in Wisconsin in violation of Section 201.41 Wisconsin Statutes 1923.

Tenth. That the court erred in refusing to hold that the dealers in and distributors of Chrysler cars in Wisconsin including plaintiff and others similarly situated, are not violating any law of Wisconsin and that there is no Wisconsin law sanctioning or supporting the prosecutions and actions against such dealers and distributors threatened by defendant.

Eleventh. That the court erred in holding that the threatened acts of defendant W. Stanley Smith are supported and sanctioned by law and in refusing to hold that said threatened acts and proceedings are not supported by law but are contrary to law and beyond the power of defendant and threaten to cause irreparable injury and damage to plaintiff and others similarly situated.

Twelfth. That the court erred in holding that Section 209.04 Wisconsin Statutes 1923 construed as prohibiting the acts of Chrysler dealers and distributors, including [fol. 111] plaintiff and others similarly situated as set out in the complaint is a valid law and does not violate any provision of the Constitution of the United States.

Thirteenth. That the court erred in holding that by virtue of the facts set out in complaint the Palmetto Fire Insurance Company is subject to tax by the State of Wisconsin in respect to premiums on the contract of insurance involved in this action and that liability to such tax exists and that the Wisconsin Statute imposing such tax is not in violation of the Constitution of the United States.

Fourteenth. That the court erred in refusing to hold that the statutes of the State of Wisconsin in so far as they may be construed as prohibiting or penalizing the acts of dealers in and distributors of Chrysler cars in Wisconsin, including plaintiff and others similarly situated, are invalid as in violation of the Constitution of the United States in that such statutes so construed take the property of said dealers and distributors without due process of law and take the property of the plaintiff herein, and others similarly situated, without due process of law and deny to said dealers and distributors, including plaintiff the equal protection of the law and prohibit the sale of plaintiff's property by itself and other independent dealers in Wisconsin by virtue of the fact that the Chrysler Sales Corporation has effected

in Michigan a contract of insurance protecting and benefitting all retail purchasers of Chrysler cars, thus attempting to penalize the making of a contract of insurance outside the State of Wisconsin and to lay a burden thereon and because said statutes so construed destroy and take away without due process the liberty of contract of said dealers and distributors, including plaintiff and others similarly situated, to the prejudice and destruction of plaintiff's business, and because said statutes so construed [fols. 112 & 112½] violate the 14th Amendment to the Constitution of the United States, and also Article IV, Section 1 and Article I, Section 10 of said Constitution of the United States.

Fifteenth. That the court erred in refusing to hold that the threatened acts of the defendant would deprive plaintiff of its property without due process of law and deny plaintiff the equal protection of the law in violation of the 14th Amendment to the Constitution of the United States.

Sixteenth. That the court erred in refusing to hold that in so far as Wisconsin Statutes are construed as prohibiting the acts of Chrysler distributors and dealers in Wisconsin, including plaintiff, they impose a burden and prohibition on interstate commerce contrary to the Constitution of the United States.

Wherefore plaintiff prays that the order and decree may be reversed and that plaintiff may have an adjudication and decree in its favor.

Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toebaas, Attorneys for Plaintiff.

[Endorsed:] Original. 49 Equity. United States of America, District Court, Western District of Wisconsin. Clark Motor Company, Plaintiff, vs. W. Stanley Smith, Commissioner of Insurance of the State of Wisconsin, Defendant. Assignment of Errors. Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toebaas, Attorneys. 2-29 Board of Commerce Bldg., Madison, Wisconsin. Due service of within assignment of errors and of notice of within appeal admitted this 16th of December, 1925. Herman L. Ekern, by T. L. McIntosh, Attorneys for Defendant. U. S. District Court, West. Dist. of Wis. Filed Dec. 16, 1925. Herbert C. Hale, Clerk. C. W. Bishop, Dep.

[fol. 113] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND STIPULATION  
AS TO PARTS OF RECORD TO BE PRINTED—Filed February  
2, 1926

It is hereby stipulated that the transmitting of the record in this action was delayed because of necessity for counsel on both sides to go over transcript and agree on corrections which have been made. Stipulated further that this case may be docketed at once if not already docketed.

Appellant states that in pursuance of rule ten of the United States Supreme Court it expects to rely on each and all of the assignments of error which are attached to the record filed in this case.

It is stipulated that the following parts of the record need not be printed and that same are not necessary for a consideration of the assignments of error or any of them:

(1) Omit Bond on Appeal, pp. 4 and 5, of Record, and insert in lieu thereof the following:

“Here appears Bond on Appeal duly approved by District Court.”

(2) Omit Precipe for Transcript on said appeal, pp. 6-8, of record, and insert:

“Here appears Precipe for Transcript on said Appeal, with admission of due service of same.”

(3) Omit Notice of Plaintiff to the Defendant and to the Governor of the State of Wisconsin, and to the Attorney [fol. 114] General of the State of Wisconsin notifying of Application for interlocutory injunction at pp. 79-81 of record and insert in lieu thereof the following:

“Here appears due notice of plaintiff to the defendant, to the Governor of the State of Wisconsin, and to the Attorney General of the State of Wisconsin, notifying him and them of the application of the plaintiff for an interlocutory or preliminary injunction and due and sufficient admissions of service of the same, which notice was given in accordance with section 266 Judicial Code.”

(4) Omit application for hearing under section 266 Judicial Code, and Motion for Temporary Restraining Order filed August 3, 1925, at p. 82 of Record, and insert in lieu thereof the following:

"Here appears application for hearing under section 266 Judicial Code and motion for temporary restraining order filed August 3, 1925."

(5) Omit Subpoena and return at pp. 37 and 38 of Record, and insert in lieu thereof the following:

"Here appear subpoena issued on Bill of Complaint and return thereof."

(6) Omit Bond on Restraining Order at pp. 83 and 84 of Record, and insert in lieu thereof the following:

"Here appears Bond on Restraining Order approved by District Court."

It is further stipulated and agreed that if from oversight or omission any necessary part of the record be not thus printed that the appellant has the right to print, or may be required by the defendant in error to print, any further or additional portions thereof.

It is hereby stipulated and agreed that both appellant and appellee waive any right to further reduce or diminish [fol. 115 & 116] the printed record and request that the record be at once printed.

Dated January 29th, 1926.

Ralph W. Jackman, H. M. Wilkie, Oscar T. Toebaas,  
Counsel for Plaintiff and Appellant. Herman L.  
Ekern, Attorney General, Counsel for Defendant  
and Appellee.

[fol. 117] [File endorsement omitted.]

Endorsed on cover: File No. 31,660. Western Wisconsin D. C. U. S. Term No. 937. Clark Motor Company, appellant, vs. W. Stanley Smith, Commissioner of Insurance of the State of Wisconsin. Filed February 1st, 1926. File No. 31,660.

**TRANSCRIPT OF RECORD.**

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**Supreme Court of the United States**

**OCTOBER TERM, 1926**

**No. 287**

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**CHRYSLER SALES CORPORATION, APPELLANT,**

**vs.**

**W. STANLEY SMITH, AS COMMISSIONER OF  
INSURANCE OF THE STATE OF WISCONSIN**

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**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF WISCONSIN**

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**FILED FEBRUARY 1, 1926**

**(31,661)**





(31,661)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 938

CHRYSLER SALES CORPORATION, APPELLANT,

*vs.*

W. STANLEY SMITH, AS COMMISSIONER OF  
INSURANCE OF THE STATE OF WISCONSIN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF WISCONSIN

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[Caption omitted]

[fols. 3 & 3½] **IN UNITED STATES DISTRICT COURT,  
WESTERN DISTRICT OF WISCONSIN**

In Equity

CHRYSLER SALES CORPORATION, Plaintiff,

vs.

W. STANLEY SMITH, as Commissioner of Insurance of State  
of Wisconsin, Defendant

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed  
December 15, 1925

Chrysler Sales Corporation, plaintiff in above entitled action, in which plaintiff's application for temporary injunction was heard in accordance with the provisions of Section 266 Judicial Code and was determined adversely to plaintiff, considering itself aggrieved by the order and decree of the above named court against it, entered on the 18th day of November, 1925 denying the application for an interlocutory injunction in said cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, be sent to the Supreme Court under the rules of said Court in such case made and provided.

Dated this 3rd day of December, 1925.

Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toe-  
baas, Attorneys for said Petitioner.

The foregoing appeal is allowed.

Dated December 4, 1925.

Evan A. Evans, Circuit Judge. F. A. Geiger, Dis-  
trict Judge. C. Z. Luse, District Judge.

Service of due notice of within Petition for Appeal, allowance of same and appeal admitted this December 14th, 1925.

Herman L. Ekern, T. L. McIntosh, Attorneys for Defendant.

[File endorsement omitted.]

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[fols. 4 & 5] Bond on appeal for \$500.00, approved and filed December 15, 1925, omitted in printing.

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[fol. 6] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL AND INJUNCTION PENDING  
APPEAL—Filed December 15, 1925

Chrysler Sales Corporation, plaintiff above named having filed its petition for an appeal herein and therewith its assignment of errors, now on motion of Ralph W. Jackman, Harold M. Wilkie and Oscar T. Toebaas, attorneys and solicitors for plaintiff, in term time and at the same term of the order and decree below mentioned, it is ordered that the appeal of said plaintiff, Chrysler Sales Corporation, from the interlocutory order and decree of this court heretofore filed and entered herein on the 18th day of November, 1925 be and it hereby is allowed, as prayed for, the amount of the appeal bond on said appeal being hereby fixed at the sum of Five Hundred Dollars with surety to be approved by the court or judge thereof or clerk thereof.

And it now appearing that the appellant has executed its appeal bond in the said sum of Five Hundred Dollars with American Surety Company as surety thereon and has presented the same for approval, said bond and surety are now hereby approved.

And it further appearing to the court that it is proper that an injunctional order be made to be effective pending [fol. 7] said appeal to the United States Supreme Court and it appearing that the hearing and determination of said

appeal and of similar appeal in case of Palmetto Fire Insurance Company vs. Conn, Insurance Commissioner of Ohio from United States District Court for Southern District of Ohio to United States Supreme Court and appeal in case of Palmetto Fire Insurance vs. Beha, Superintendent of Insurance of State of New York, inasmuch as they involve related questions arising out of the same contract of insurance and acts pursuant thereto, should be in view of the important public interests involved accelerated as much as possible and if possible be argued and determined together in the United States Supreme Court at the earliest possible time and it appearing that the State of Wisconsin and the public in the State of Wisconsin may be protected by proper bond pending the hearing and determination of the present appeal, now, therefore,

It is ordered that pending the hearing and determination of this appeal the defendant W. Stanley Smith, his deputies and agents and persons acting under him or at his direction be and they are restrained from interfering with the operation of the contract of Insurance between Chrysler Sales Corporation and Palmetto Fire Insurance Company and the sales of cars purchasers of which are insured under or pursuant to said contract and from prosecuting or attempting to prosecute or to cause the prosecution of any dealers in or distributors of Chrysler cars in Wisconsin by virtue of the facts, acts or transactions as set out in the complaint herein, but this order is expressly conditioned on the following and in event of failure to comply with any or all of these conditions this injunctive order shall be void.

(1) Within twenty (20) days from the date hereof the Palmetto Fire Insurance Company shall in writing filed with [fol. 8] the Commissioner of Insurance of the State of Wisconsin duly name and appoint an attorney-in-fact residing in Wisconsin on whom may be made the service of any process in any action against the Palmetto Fire Insurance Company by the State of Wisconsin in any action to collect license fees or taxes claimed by the State of Wisconsin to be due from the Palmetto Fire Insurance Company by virtue of any insurance by said company in favor of any resident of Wisconsin on any Chrysler car sold in Wisconsin between July 1, 1925 and the date of the final determination of this appeal by the Supreme Court of the United States, and on whom may be made service in any action by any resident

of Wisconsin in any action to recover on or by reason of any alleged claim against the Palmetto Fire Insurance Company under any policy or certificate of said company covering or relating to any Chrysler car sold in Wisconsin between July 1, 1925 and the final determination of this appeal, said appointment however to be without prejudice to and without any waiver of the claim of said Palmetto Fire Insurance Company that it is not and has not been transacting any business in the State of Wisconsin and has no agents therein and without waiver of and without prejudice to any claim or question involved in this litigation. Said appointment shall not be revocable pending the determination of this appeal but may thereafter be revoked if the order appealed from is reversed. Such appointment is at the direction of this court for the purpose of indemnity and security pending this appeal and shall not be deemed to constitute the transaction of any business in Wisconsin. In event of Palmetto Fire Insurance Company becoming licensed to do business in Wisconsin said appointment may be terminated without prejudice to any service made on such attorney-in-fact prior to such termination.

[fol.9] (2) The above injunctional order shall not be effective until bond in the penal sum of Fifteen thousand Dollars to be approved as to form and surety by the judge of this court shall be filed herein conditioned as follows:

(a) That the Palmetto Fire Insurance Company shall promptly pay all claims in favor of any residents of the State of Wisconsin arising out of any insurance contract executed by Palmetto Fire Insurance Company relating to any Chrysler automobile sold in Wisconsin at retail between July 1, 1925 and the final determination of this appeal and that in event of failure of Palmetto Fire Insurance Company to pay any such claim on demand in accordance with its contractual obligation the surety may be sued in Wisconsin without joining the Palmetto Fire Insurance Company.

(b) That the Palmetto Fire Insurance Company shall promptly pay to the State of Wisconsin any license fees or taxes, and any penalty for non-payment thereof if any, for which it may be or become liable to the State of Wisconsin by virtue of insurance on Chrysler cars sold at retail in

Wisconsin between July 1, 1925 and the final determination of this appeal, and that in event of failure of Palmetto Fire Insurance Company to pay any such claim or demand the surety may be sued in Wisconsin without joining the Palmetto Fire Insurance Company.

(c) In the event of reversal of order appealed from said bond shall be void except as to actions already commenced against the surety of Palmetto Fire Insurance Company.

(d) In the event of final decree in this action in favor of Plaintiff or in event of decision in favor of plaintiff on appeal from such decree this bond shall be void except as to actions already commenced against surety or Palmetto Fire Insurance Company.

(e) In the event of the Palmetto Fire Insurance Company becoming duly licensed to do business in Wisconsin this bond shall be void except as to actions already commenced against the surety, or Palmetto Fire Insurance Company.

(3) The above injunctional order shall cease and terminate if within ninety (90) days from date hereof the records on all three appeals above referred to shall not have been filed in the Supreme Court of the United States, and if appellant herein and Palmetto Fire Insurance Company shall not use all possible diligence to have all said cases advanced for argument at earliest possible time. In case the filing of the record in the New York case above referred to should be delayed through no fault of the attorneys for appellant herein or of attorneys for Palmetto Fire Insurance Company, this provision is without prejudice to application to the Supreme Court or justice thereof to continue this order. The giving of such bond is solely for purposes of security and indemnity pending said appeal and shall be without prejudice to the claim of said Palmetto Fire Insurance Company that it is not and has not been transacting business in Wisconsin, and is not and has not maintained or employed any agents in Wisconsin, and execution and filing of said bond shall not be deemed doing business in Wisconsin.

Dated December 4, 1925.

Evan A. Evans, Circuit Judge. F. A. Geiger, District Judge. C. Z. Luse, District Judge.



[fols. 11 & 12] Bond on injunction for \$15,000, approved and filed December 15, 1925, omitted in printing.

[fols. 13 & 13½] Due service of within order and bonds and notice thereof admitted December 14, 1925.

Herman L. Ekern, T. L. McIntosh, Attorneys for Defendants.

Due service of the within admitted this 14th day of December, 1925.

W. Stanley Smith, Commissioner of Insurance, State of Wisconsin.

[File endorsement omitted.]

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[fols. 14-16½] Præcipe for Transcript of Record, with Proof of Service, omitted in printing.

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[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT—Filed August 3, 1925

To the Honorable the Judge of the District Court for the Western District of Wisconsin:

The plaintiff above named for its bill of complaint herein respectfully shows to this Honorable Court:

(1) Plaintiff, Chrysler Sales Corporation, is a corporation duly organized and existing under and by virtue of the laws of the State of Michigan, and its principal office and place of business is located in the City of Highland Park, County of Wayne and State of Michigan; and said corporation is a citizen of said State of Michigan.

(2) Defendant, W. Stanley Smith is the duly appointed, qualified and acting Commissioner of Insurance of the State of Wisconsin, and is a citizen and resident of the State of Wisconsin, and of the Western District of Wisconsin.

(3) The ground upon which the jurisdiction of this Court depends are that the plaintiff is a citizen of the State of

Michigan, and the defendant is a citizen of the State of Wisconsin; and that the action arises under the constitution and laws of the United States.

[fol. 18] (4) The matter in controversy exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars (\$3,000).

(5) Plaintiff is engaged in the business of buying from Chrysler Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and having its principal factories in the State of Michigan, and other factories in the states of Ohio and Indiana, all of the automobiles and parts manufactured by Chrysler Corporation, and selling the same at wholesale to distributors and dealers in the United States, Canada, Mexico and other countries in all parts of the world. The automobiles manufactured by said Chrysler Corporation and so sold by plaintiff are known as Chrysler cars, enjoy a favorable reputation with the public and have been and are being purchased by the public in rapidly increasing numbers. At present more than three thousand (3,000) dealers in the United States are selling Chrysler cars. The selection of distributors and dealers and the establishing and maintaining a large sales organization is difficult and expensive. For this purpose plaintiff has expended large sums of money, and maintains a staff of more than two hundred persons. Success in the business of making and selling automobiles depends largely on the selection and retention of distributors and dealers who are the customers who buy cars from the plaintiff. In the State of Wisconsin there are more than one hundred-thirty (130) distributors and dealers who are buying Chrysler cars and selling them to the public. Plaintiff has acquired and built up a valuable business with said customers which is a very valuable property right and is dependent on the retention of said customers and on the retention of the good will of [fol. 19] said customers and on giving satisfaction to the buying public. Sales of Chrysler cars to Wisconsin customers by plaintiff during the first half of 1925 exceeded Five Hundred Thousand Dollars (\$500,000).

6. More than eighty per cent (80%) of automobiles of all makes sold to the American public are sold under plans

whereby the purchasers at retail pay only part of the purchase price at the time of taking delivery of the car and are given credit for the balance which is usually made payable in instalments. Ordinarily distributors and dealers have not sufficient capital to enable them to hold themselves the evidences of the unpaid balances due upon the automobiles thus sold on credit. It is the common practice for the distributors and dealers before selling cars on time to assure themselves of the services of a bank or finance company which agrees to purchase from them or to discount for them the notes, or other evidences of the balances due. The banks or finance companies rendering such services are obliged to maintain organizations to collect the payments when they are due and to watch that the cars are not improperly disposed of before they are paid for. They always require that insurance against the perils of fire and theft be effected in respect to the cars which they finance. In order to cover the expenses of collecting the instalments and of guarding against the making away with cars before full payment of the instalments the finance companies have made substantial charges. These charges together with the cost of insurance and the interest on the unpaid balance of the purchase price, have always been paid by the retail purchasers of automobiles not been uniform and have been generally high. The placing of insurance has been largely [fol. 20] controlled by finance companies and the insurance business has been rapidly getting away from local insurance agents. Frequently purchasers of cars of many makes have paid excessive finance charges. This has increased the ultimate price paid by the consumer. In many instances local dealers have become connected with finance companies and have shared in profits made by such companies. Plaintiff as an active competitor in the automobile field saw that it would be a great advantage to buyers of Chrysler cars if arrangements could be made by the plaintiff to secure a uniform and moderate financing charge on all Chrysler cars. In order to accomplish this purpose it was necessary to provide for uniform insurance protection on all Chrysler cars. Plaintiff found that it was in a position to secure such insurance at moderate cost by an open contract or policy of insurance made and to be performed in Michigan, covering every Chrysler car against fire and theft for one year after date of purchase at retail for an

amount not to exceed the factory list price. Such insurance could be obtained at low cost because of the unusually low loss ratio on Chrysler cars throughout the United States, and because of the unusually low acquisition cost to the insurance company of writing such a policy. By such a policy automatic protection for every retail buyer of a Chrysler car, and for any other parties having an interest therein or lien thereon could be provided. Uniform insurance being thus arranged, a moderate and uniform financing charge could be obtained available for all sales of Chrysler cars on the instalment plan. Thereby the value of the Chrysler product to the ultimate buyer would be increased and a real saving made. It is estimated that this saving to the retail buyers of Chrysler cars will amount to a sum between Three Millions and Five Millions of dollars annually

[fol. 21] (7) Therefore on or about the 16th day of June, 1925, plaintiff and Palmetto Fire Insurance Company, an insurance corporation duly organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office in Sumter, in said state, and duly authorized and licensed to conduct and transact business of writing direct fire and theft insurance in the State of Michigan, and maintaining a duly licensed general agency in the State of Michigan but not licensed to do business in the State of Wisconsin, and not doing any business or maintaining any agency therein, duly executed in the State of Michigan a contract or policy of insurance made and to be performed in the state of Michigan, wherein and whereby said Palmetto Fire Insurance Company undertook to insure and did insure all Chrysler automobiles sold in the United States at retail during the term of the policy against fire and theft for one year from the date of such sale, said insurance being granted under and pursuant to the terms and conditions of said contract or policy of insurance. A copy of said policy is attached hereto, marked Exhibit "A" and made a part of this bill.

(8) Said contract or policy is what is known as an open policy. Its term is for one year from July 1, 1925, covering against loss by fire or theft all Chrysler cars sold in the United States during the policy year for the full factory

list price f. o. b. Detroit, for a term of one year from the date of sale to the retail purchaser. Under the terms of said contract or policy insurer is to issue a certificate in the name of plaintiff for the account of whom it may concern whenever a car is reported sold at retail. Said policy expressly provides, however, that omission to report the sale of a car or to issue a certificate in respect thereof shall not prevent the retail buyer of the car [fol. 22] and others interested from being protected under said policy. Only the plaintiff pays, or is liable to pay to said Palmetto Fire Insurance Company the agreed premium on said policy, and said premium is paid in the State of Michigan, and said policy is kept in the State of Michigan. Certificates are mailed by the Insurance Company from Michigan to the retail purchasers of said cars as a memorandum of the coverage afforded by said open policy, with counterparts to others known to have an interest in the respective cars.

(9) Plaintiff having entered into said contract or policy thereupon obtained and made available to retail purchasers of Chrysler cars a reduced uniform finance rate for time purchases, to-wit, eight per cent of the unpaid balance and announced the same to the public. Plaintiff expended large sums in advertising said plan to the public. When retail sale of a Chrysler car is made, whether for cash or on time, the purchaser and other parties interested are protected by the said Michigan contract made between plaintiff and said Palmetto Fire Insurance Company. Whether said car is sold for cash or on time, the price is the same, except for said charge of eight per cent upon the unpaid balance, if the car is sold on time. No purchaser may obtain his car at a less price whether or not he desires the protection of such insurance. The insurance comes into effect under the Michigan contract made by plaintiff with said Palmetto Fire Insurance Company, and the dealer or distributor can do nothing to prevent said insurance so coming into effect. For the protection of cash purchasers who desire other insurance than that provided by said contract or policy, the policy provides that if such purchaser takes other insurance, this insurance shall be merely excess insurance.

(10) The distributors of and dealers in Chrysler cars are in no way agents of the plaintiff. The course of the business is as follows: Plaintiff having from time to time fixed [fol. 23] the list price of its cars, sells them to its distributors for a cash price computed as follows: list price less a given discount, plus war tax and certain delivery charges. Freight is paid by the distributor. From time to time as occasion may have required changes have been made in amount of list price, discount, or delivery charges which have also been known as handling charges or unloading charges. In computing the discount there is not included either the war tax, freight or the delivery charge. On July 1, 1925 additions were made to the delivery charge on all models of Chrysler cars. The distributor sells to the dealer, on the same basis as the distributor has bought, but less a smaller discount on list price. The dealer in turn sells to the retail purchaser at a price equal to the list price plus freight, war tax, and delivery charge. The retail dealer reports to plaintiff the name of the purchaser, date of sale, motor number, style, etc., on retail sales made. Plaintiff notifies the agent in Detroit, Michigan, of said insurance company who mails the certificate hereinbefore referred to from his office in Detroit to the purchaser and counterparts to others who to his knowledge may have an interest in the car.

(11) No dealer or distributor takes any part in writing or placing, or in the payment for the insurance under said Michigan contract. He neither solicits nor receives nor transmits any application for insurance. No arrangement that he can make with the retail purchaser can change the protection afforded by the policy or prevent it from taking effect. There is no application which the insurer can accept or reject. Neither does the distributor or dealer solicit, demand, receive or transmit any premium. He must pay for each car on receipt of same the full price as above set out. He can get back no part of said purchase price which he has paid for the car. What he receives from the [fol. 24] retail purchaser upon the sale of a car is his to do as he pleases. It is the proceeds of his own property for which he has already paid. No part of it is he bound to transmit to anybody as a premium for insurance or in any other guise. No dealer or distributor acts in any manner

in behalf of or as agent of said Palmetto Fire Insurance Company. Neither the distributor nor the dealer receives any commission or other compensation in any form on or by virtue of the insurance protection afforded to the retail purchaser by said Michigan contract.

(12) Chrysler cars are now being sold in large numbers in Wisconsin and the retail purchasers thereof and other parties interested in said cars wherever said purchasers or parties may reside and wherever in the United States, Canada or Mexico said cars may be taken or kept are protected by said insurance policy. Defendant claiming to act as Insurance Commissioner of the State of Wisconsin has ruled and announced to the public that the sale of Chrysler cars, pursuant to the plan hereinbefore described, wherein and whereby the purchaser becomes protected by the Michigan insurance contract as above stated is contrary to the laws of the State of Wisconsin, and that plaintiff and every Chrysler distributor or dealer selling Chrysler cars in Wisconsin is violating the criminal and civil laws of the said state, including among others the following statutes; Sections 4575s, 209.04; 209.05; 203.08; 201.44, Wisconsin Statutes, 1923 and other statutes not specified by defendant. Defendant has threatened and is now threatening to immediately procure the arrest and conviction of every Chrysler distributor or dealer selling in Wisconsin any Chrysler car the purchaser of which is or may be protected under said insurance contract made in Michigan between plaintiff and Palmetto Fire Insurance Company. [fol. 25] Defendant has sent out and is giving out and publishing letters and communications stating that plaintiff, said dealers and distributors and said Palmetto Fire Insurance Company are violating the law of Wisconsin by virtue of sales of cars as hereinbefore alleged. As a result many distributors and dealers have been and are being approached by those receiving said communications from defendant and threatened with legal proceedings criminal and civil if they do not stop selling cars where the purchaser is protected by insurance as above indicated. By and as the result of said threats and communications published by defendant, dealers, distributors and prospective retail buyers of Chrysler cars in Wisconsin are being harassed and intimidated and brought into a state of uncertainty seriously



injurious to plaintiff's business with persons in Wisconsin and in the sale of its product in said state. Unless relief by temporary restraining order is immediately granted to plaintiff against said threats and threatened acts of defendant plaintiff's business with parties in Wisconsin will be destroyed or irreparably damaged and immediate and irreparable loss and damage will result to plaintiff before the matter can be heard on notice. Unless plaintiff is further granted temporary injunction against said threats and acts and threatened acts pending this action and until final decree herein, plaintiff will suffer immediate and irreparable property loss and damage before the merits of this action can be determined. The injuries done by said acts and threats of defendant are not and will not be compensable by damages. The action threatened by defendant will result in multiplicity of prosecutions which will irreparably damage and injure the sale of Chrysler cars in Wisconsin, and injure the good will of plaintiff and the value of plaintiff's business with persons in Wisconsin, and for such damage and injury damages cannot be ascertained. Plaintiff has no adequate remedy at law.

(13) All said acts and threats of defendant are unlawful, [fol. 26] and as plaintiff is informed and believes, without sanction or support in the laws of the State of Wisconsin under which he assumes to act. Neither the plaintiff nor any dealer or distributor of Chrysler cars in Wisconsin in violating or threatens to violate any law of the State of Wisconsin all of which appears from the facts hereinbefore set forth, and the laws of the State of Wisconsin of which this court will take judicial notice. The Statutes of Wisconsin relied on by defendant, properly construed have no application to the acts of plaintiff and of distributors of and dealers in Chrysler cars in Wisconsin as hereinbefore set forth

(14) If and to the extent that the laws of the State of Wisconsin purport or may be construed to prohibit distributors of and dealers in Chrysler cars in Wisconsin from making sales in the manner hereinbefore set forth in Wisconsin of automobiles the retail purchasers of which shall be protected by said contract made in Michigan, or purport or may be construed to subject said dealers and distributors to criminal prosecution and punishment or to forfeitures



by reason of sale so made by them, or purport or may be construed to invalidate or otherwise apply to said insurance contract made by plaintiff in Michigan with Palmetto Fire Insurance Company, then to that extent said state statutes are void as violating and as contrary to the constitution of the United States and amendments thereto and particularly the Fourteenth Amendment thereof by reason of depriving the plaintiff and customers of plaintiff, (i. e. distributors and dealers in Wisconsin) of property without due process of law, impairing the freedom of contract guaranteed by the Federal Constitution and denying to the plaintiff and said distributors of and dealers in Chrysler cars the equal protection of the laws, and as attempting to regulate, prohibit and burden the making and performance of a contract lawfully made and to be performed outside the limits of the State of Wisconsin. For the same reason, the acts and rulings of defendant as Commissioner of Insurance of the State of Wisconsin as hereinbefore alleged are likewise a violation [fol. 27] of the Constitution of the United States.

(15) For as much therefore as plaintiff is without remedy in the premises except in a court of equity and to the end that plaintiff may obtain from this Honorable Court the relief to which plaintiff is by right and equity entitled, plaintiff respectfully prays that the above named defendant be directed to full true and perfect answer make to this bill of complaint but not under oath, answer under oath being hereby expressly waived and that defendant, and his successors in office, and his deputies, agents and employes and all persons acting for him be permanently restrained and enjoined from bringing or causing to be brought or threatening to bring or to cause to be brought any prosecutions or any actions or proceedings for the recovery of penalties or forfeitures or any civil actions or proceedings against the plaintiff or against the distributors of or dealers in Chrysler cars in Wisconsin based on or purporting to be based on or by reason of said contract of insurance between plaintiff and Palmetto Fire Insurance Company or based on or purporting to be based on or by reason of any rights existing or arising in favor of residents of Wisconsin or in respect to property situated in Wisconsin by reason of the existence of said contract of insurance or the performance

thereof or the sale of Chrysler cars in Wisconsin, or based on or purporting to be based on or by reason of any of the acts done or to be done or business transacted or to be transacted by plaintiff or by any distributor of or dealer in Chrysler cars in Wisconsin in the course of its or their business as more particularly described in this bill of complaint and from interfering in any other manner with its or their said business as aforesaid, and restrained and enjoined from issuing, declaring or publishing any statement, official or otherwise, that plaintiff or any of said distributors or dealers is violating any law of the State of Wisconsin by virtue of any of the acts or transactions set forth herein. Plaintiff further prays that pending the final hearing [fol. 28] and determination of this action a temporary injunction be granted restraining defendant and his successors in office, his deputies, employes and all persons acting under him as hereinbefore prayed and that on final hearing said injunction be made perpetual. Plaintiff further prays for such other and further relief as may be equitable and proper in the premises.

Wherefore plaintiff prays that a writ of subpoena issue herein, directed to the above named defendant, W. Stanley Smith, Commissioner of Insurance of the State of Wisconsin, commanding him on a day certain to appear and answer to this bill of complaint.

Chrysler Sales Corporation. Ralph W. Jackman,  
Harold M. Wilkie, Oscar T. Toebass, Solicitors for  
Plaintiff. Larkin, Rathbone & Perry, of Counsel.

[fol. 29] *Duly sworn to by F. A. Morrison. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 30] Non-Valued Fire, Theft & Transportation Form

No. A-9652

EXHIBIT "A" TO BILL OF COMPLAINT AUTOMOBILE POLICY

Palmetto Fire Insurance Company, Sumter, South  
Carolina,

In consideration of the warranties and the premium herein-after mentioned, does issue the Assured named therein, and legal representatives, for the term herein specified, to an amount not exceeding the amount of insurance herein specified, against direct loss or damage, from the perils insured against, to the body, machinery, and all standard factory equipment (but exclusive of extra equipment and accessories) of the automobiles described herein while within the limits of the United States (exclusive of Alaska, the Hawaiian and Phillipine Islands and Porto Rico) and Canada and Mexico, including while in building, on road, on railroad car or other conveyance ferry or inland steamer, or coastwise steamer between ports within said limits,

Amount: \$ As specified: Premium: As agreed.

Name and address of assured: Chrysler Sales Corporation, Detroit, Michigan.

and/or for account of whom it may concern as hereinafter specified.

The term of this policy begins at Noon on the 1st day of July, 1925, and ends at Noon on the 1st day of July, 1926 Standard Time. (All certificates issued hereunder, however, remaining in full force and effect for the term specified in such certificates.)

Amount of Insurance: As specified. Dollars (\$—.)

#### Warranties

The following are statements of facts known to and warranted by the Assured to be true, and this policy is issued by the Company relying upon the truth thereof:

1. Assured's occupation or business is: This information not required by insurer.

2. The following is the description of the automobiles: Information not required except as hereinafter specified.

3. The facts with respect to the purchase of the automobile described are as follows: This information not required by insurer except as hereinafter specified.

4. The uses to which the automobile described are and will be put, are: This information not required by insurer.

5. The automobile described is usually kept in garage, located: This information not required by insurer.

### Non-vitiation Clause

Anything hereinafter contained to the contrary notwithstanding, the insurance provided for herein shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which any automobile covered by such insurance shall be used (except the unlawful transportation of liquor) nor by the nature of the occupation or business of any of the Assured, nor by the location where any such automobile is kept.

### [fol. 31] Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

### Exclusions

**Property Excluded.**—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies;

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by Invasions, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto:

**Title and Ownership.**—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership; or in the case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

**Encumbrance.**—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

### Conditions

**Limitation of Liability and Method of Determining Same.**—This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

**Abandonment.**—It shall be optional with this company to take all or any part of the property at the appraised

value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

**Loss for which Bailee for Hire is Liable.**—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by way of [fol. 32] loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deduction cost and expense of collection.

**Noon.**—The word "Noon" herein means noon of standard time at the place the contract was made.

**Misrepresentation and Fraud.**—Any certificate issued hereunder shall be void if the Assured name therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

**Protection of Salvage.**—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment

of a reward offered for the recovery of the insured property unless authorized by the Company.

**Notice and Proof of Loss.**—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to *be* the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the county and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examina-



tion herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice ascertainment, estimate and verified proof of loss herein required have been received by this Company, and if appraisal is [fol. 33] demanded, then not until sixty days after an award has been made by the appraisers.

**Subrogation.**—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

**Suit Against Company.**—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall fully comply with all the foregoing requirements, nor unless commenced within twelve (12) months next after the happening of loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

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[fol. 34] EXHIBIT "A" TO EXHIBIT A TO BILL OF COMPLAINT

Witnesseth, for valuable consideration, it is agreed that the following rider shall be attached to and form a part of Policy No. A9652 of the Palmetto Fire Insurance Company, herein called Insurer, and shall supersede and take the place of anything to the contrary in the other conditions and provisions of this policy.



## I. Definitions

The following words, whether singular or plural, unless the context otherwise requires, shall mean—

Chrysler shall mean Chrysler Sales Corporation, a Michigan Corporation, of Highland Park, Mich., its successors and assigns.

Commercial Credit shall mean Commercial Credit Company, a Delaware Corporation of Baltimore, Md., its successors and assigns including its Branches and Sub-Branches.

Affiliated companies shall mean Commercial Credit Corporation, a New York Corporation of New York, N. Y.; Commercial Credit Company, Inc., a Louisiana Corporation of New Orleans, La.; Commercial Credit Trust of Chicago, Ill., a common law trust with trust deed on file at The Old Colony Trust Company, Boston, Mass., and shall also include any and all other corporations, common law trusts, firms or companies with which Commercial Credit is now or may become affiliated through stock ownership or otherwise; and all the branches and sub-branches of such affiliated Companies through which they may operate in financing the retail sale or lease of Chrysler Cars, and their respective successors or assigns.

Other finance companies shall mean banks, trust companies, finance or credit companies, corporations, co-partnerships, common law trusts, dealers, individuals and other organizations, other than Commercial Credit or Affiliated Companies, who may finance the retail sale or lease of Chrysler cars.

Chrysler cars shall mean new and unused commercial and passenger automobiles to be sold or distributed by Chrysler and which are or may be sold or distributed by Chrysler and which are or may be manufactured by Maxwell Motor Corporation, a West Virginia Corporation, of Detroit, Michigan, its successors or assigns.

Finance shall mean to purchase or loan upon or to cause to be purchased or loaned upon, to discount or otherwise acquire the notes and/or security instruments made and given to dealers by purchasers in connection with the purchase or lease of Chrysler cars at retail.

Dealer shall mean persons, firms, or corporations selling or leasing or agreeing to sell or lease Chrysler cars at retail.

Purchaser shall mean persons, firms or corporations purchasing or agreeing to purchase Chrysler cars at retail for cash or on deferred payments, or lease Chrysler cars at retail on deferred payments.

Notes shall mean promissory notes or other obligations made and given by purchasers to dealers as evidence of the [fol. 35] deferred payments owing on the retail purchase or lease price of Chrysler cars when they are sold or leased by dealers to purchasers upon a deferred payment plan.

Term of this policy shall mean the period during which insurance hereunder may become effective, to wit: July 1, 1925 to June 30, 1926, both dates inclusive.

Security instruments shall mean conditional sale contracts, chattel mortgages, leases, bailment contracts, other instruments, reserving or creating title, liens, security or other property interest in Chrysler cars sold at retail to purchasers on a deferred payment plan.

Policy shall mean this contract of insurance.

Certificate shall mean memorandum of insurance under this policy issued or to be issued as herein provided.

Insurance shall mean insurance against the hazards provided for in policy and/or certificates.

## II. Purpose

Chrysler desires to increase the retail sale of Chrysler cars and to obtain for dealers a uniform maximum rate for financing retail sales and to provide insurance at a uniform maximum rate throughout the entire United States for the benefit of purchaser and/or other parties mentioned in the policy and certificates as their respective interests may appear on each Chrysler car purchased at retail. Chrysler proposes to advertise throughout the United States the benefits resulting to purchasers from insurance under policy and certificates issued hereunder. Commercial Credit desires to obtain so far as possible the financing of the retail sales of Chrysler cars. Insurer desires to obtain insurance in respect to all Chrysler cars sold and leased and delivered at retail to purchasers by dealers throughout the United States during the term of this policy.

### III. Assured and Coverage.

Insurer does hereby insure Chrysler, Commercial Credit, and all Affiliated Companies, other Finance Companies, Dealers and Purchasers as their interest may appear against the hazards mentioned in the printed part of this policy to Chrysler cars but in no event shall this insurance cover loss or damage by confiscation of Chrysler cars used in violation of any liquor or prohibition statutes.

All banks, trust companies, persons, firms or corporations with or to whom Commercial Credit and/or Affiliated Company and/or Other Finance Companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments, shall be protected by this insurance.

All parties covered hereunder shall be protected and be considered parties to this policy with the same force and effect as if they severally accepted the same, upon the acceptance of this contract by Commercial Credit and Chrysler.

Coverage hereunder and under said Certificates shall be for one hundred (100%) per cent of the list price of each Chrysler car covered hereby, f. o. b. Detroit, on date of purchase or lease of same by purchaser, including standard [fol. 36] equipment but exclusive of extra equipment and accessories, but in no event shall the Insurer be liable upon loss to or of any Chrysler car for an amount in excess of the actual cash value thereof at the time of such loss.

Coverage hereunder and under Certificates shall be automatically effective from the date on which (during the term of this policy) each Purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, whichever shall be the earlier, and shall extend in respect to such Chrysler car for a period of twelve (12) months; provided that in every case where a note and/or security instruments shall have been given in connection with the purchase of any Chrysler car, coverage on such car shall be effective from the date of such note and/or security instruments; and provided further, that no Chrysler car shall be insured hereunder which shall have been in possession or in transit to any dealer or distributor on July 1, 1925, and which shall not have been included in any detailed report provided for in Paragraph VII hereof.

It is expressly agreed that all Chrysler cars shall be auto-

matically covered as provided herein, notwithstanding the failure or omission to apply for a Certificate or the failure or omission to issue a Certificate or the failure or omission to report any Chrysler car as required herein. No act or omission to act by any purchaser or any of the other insured hereunder shall vitiate or in any manner effect the indemnity or coverage of the other parties insured hereunder not responsible for such act or omission to act, it being the intent that only parties responsible for such act or omission to act shall suffer thereby.

Anything herein to the contrary notwithstanding, *is* expressly agreed that no Chrysler car shall be insured hereunder which does not at the time when the insurance thereon would otherwise become effective hereunder, carry a Class A Rating for fire insurance assigned by the National Board of Fire Underwriters, or is not continuously equipped with a locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

Coverage on Chrysler cars shall not be vitiated or affected because such Chrysler cars are operated across the border of the United States into the territory of the Government of Mexico.

The insurance effected hereby shall be deemed to have been placed with Insurer through such insurance brokers as Commercial Credit may from time to time designate.

#### IV. Certificates

Insurer shall issue certificates to purchaser substantially in the form attached hereto which certificates and insurance evidenced hereby shall not be subject to cancellation by either party. If Chrysler cars are financed, there shall be issued upon request a duplicate of such certificate to Commercial Credit, Affiliated Companies or Other Finance Companies financing such Chrysler cars.

#### V. Transfers

If any original purchaser should transfer his interest in [fol. 37] any Chrysler car insured hereunder and should mail a notice of such transfer, together with his certificate and \$1.50 to Insurer, said insurance coverage shall continue

for the unexpired term originally insured so as to protect transferee of original purchaser's interest, and Insurer shall issue new certificate for such unexpired term to transferee; provided, however, that if any such Chrysler car has been financed the consent in writing of Commercial credit, Affiliated Companies or Other Finance Companies financing the same shall first have been obtained to such transfer.

## VI. Excess Insurance

In all cases where Insurer disclaims liability to a purchaser on account of other insurance, coverage hereunder shall be considered as excess insurance and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted; if full recovery has not been made from such other insurance of all amounts owing on any note for a Chrysler car financed within 90 days of the filing of a claim for loss. Insurer shall advance the amount of its liability hereunder to the assured authorized to receive payment of the loss as a loan without interest, the payment of which shall be conditioned upon, and only to the extent of, any recovery from such other insurance.

In all cases where Insurer disclaims liability to a purchaser, Insurer may pay the amount of its Liability hereunder to the party authorized to receive the same, other than purchaser, as a loan without interest instead of a payment of a loss, the repayment of which to Insurer shall be conditioned upon and only to the extent of any recovery from purchaser by the party to whom such loan has been made by Insurer; if any action is brought against Purchaser at the request of Insurer, Insurer shall pay all attorneys' fees, expenses and costs of such action.

If any claims or legal action should be made or commenced against Chrysler, Commercial Credit, Affiliated Companies or other Finance Companies by purchaser arising out of the refusal of Insurer to pay any loss under this policy or certificate, Insurer shall defend any such claim or action and pay all attorney's fees, costs and expenses incurred and or judgments recovered in any such claim or action.

## VII. Reports

At any time or from time to time during the term of this policy Chrysler shall send original detailed reports to Commercial Credit and a duplicate thereof to Insurer by mailing the same to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for account of Insurer, of such Chrysler cars, with models and serial numbers thereof as were in the possession of or in transit to its distributors and or dealers and unsold as of July 1, 1925, and on which insurance is desired hereunder.

Chrysler shall send an original report to Commercial Credit and a duplicate thereof to Insurer by mailing same to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for the account of Insurer, on or before the 15th day of each month beginning with the Month of August, 1925, for shipments during July, 1925, and ending with the month of July, 1926, showing separately the number of all [fol. 38] Chrysler 4 Cylinder, 6 Cylinder and Commercial cars shipped to its dealers and distributors throughout the United States during the preceding month, which Chrysler cars may be sold at retail in the future and then may become subject to insurance hereunder; said reports shall show the number of Open and Closed Chrysler 4 Cylinder, Open and Closed Chrysler 6 Cylinder, and Commercial Chassis and Commercial Cars with Bodies, with the serial and motor numbers respectively, thereof.

Chrysler further agrees to submit such other information as Insurer or Commercial Credit may from time to time reasonably require regarding Chrysler cars that are or may become covered by Insurance hereunder and to permit Insurer or Commercial Credit from time to time to check its reports against those of Chrysler in regard to such Chrysler cars.

## VIII. Premiums

Agreed premiums are to be paid by Chrysler for insurance hereunder and shall be paid by Chrysler to Commercial Credit or to any insurance broker designated by Commercial Credit on or before the 15th day of each month, beginning on August 15, 1925, and ending on July 15, 1926, for all Chrysler cars reported by its distributors and dealers as sold and/or leased during the preceding month,

and insured hereunder, and a report thereof in detail shall accompany such remittance of premiums.

Commercial Credit shall on or before the 25th day of each month remit or cause the insurance brokerage concern designated by it to remit said insurance premiums to Alexander and Alexander, Inc., 503 St. Paul Place, Baltimore, Md., for the account of Insurer, and guarantees the payment of such premiums.

Payment of the agreed premiums hereunder made by Chrysler to Commercial Credit or to any insurance broker designated by it for that purpose shall be considered as payments made to the Insurer hereunder and the failure of Commercial Credit or of any such broker to remit such payments to Insurer shall not affect the insurance effected hereby or the validity of any certificate issued hereunder, or the rights of Chrysler hereunder.

#### IX. Payment of Losses

Payment of all losses claimed hereunder shall be made to purchaser unless the purchase of any Chrysler car has been financed in which case payment of all losses shall be made to Commercial Credit, Affiliated Companies or Other Finance Companies or Dealers financing the same for the account of all parties as their respective interests may appear.

#### X. Examination

All parties insured hereunder shall submit to an examination under oath by any person named by Insurer, and subscribe to same as often as shall be required, and shall produce for examination all books of accounts, bills, notes, or other records, or certified copies thereof if the originals cannot be found, in respect to any matters pertaining to coverage upon Chrysler cars hereunder, at such reasonable place as may be designated by Insurer or its representatives, and shall permit extracts and copies thereof to be made.

[fol. 39]

#### XI. Replacements

If Insurer should so select Chrysler will sell to Insurer new Chrysler cars at the wholesale list price, f. o. b. Detroit, on Date of loss, to replace any similar Chrysler car as to



which there has been filed a claim with the Insurer under this policy and/or certificate issued thereunder for total loss.

## XII. Recording

Recording or filing of any security instruments shall not be required by Insurer but shall be optional with Commercial Credit, Affiliated Companies, Other Finance Companies and/or holders or owners of such security instruments.

## XIII. Cancellations

This policy and certificates are not subject to cancellation by Insurer or any of the assured but this policy shall terminate June 30, 1926, unless previously renewed by mutual agreement; provided, however, that Certificates covering Chrysler cars insured as herein provided on any date up to and including the date of termination of this Policy shall be and remain in effect and protect all parties concerned until their respective expiration.

## XIV. Qualified Company

Insurer warrants that it is qualified to do business in the State of Michigan, and that this policy shall be so executed, and all certificates shall be so issued, as to comply with the insurance laws of all of the States in which the purchasers reside.

## XV. Michigan Law to Govern

Policy and certificates are to be construed and governed according to the laws of the State of Michigan.

To Commercial Credit Company.

To Chrysler Motor Corporation.

The foregoing rider will be attached to a standard form of automobile policy countersigned by our duly authorized representative in the State of Michigan and policy contract delivered to you completed.

Palmetto Fire Insurance Co., by Alexander & Alexander, Inc., General Agents. (Sgd.) W. F. Alexander, Vice-President.

Approved and accepted by P. Moses, President Palmetto Fire Insurance Co.



[fol. 40]

## Form of Certificate

No. —

## Purchaser's Original Copy

Non-valued Fire, Theft & Transportation Automobile  
Form

This is to certify that under policy No. — of the Palmetto Fire Insurance Company of Sumter, South Carolina, issued to Chrysler Sales Corporation, covering for account of whom it may concern, the new Chrysler Passenger or Commercial car, sold or leased and delivered to Name of Purchaser: — — —; Address (No.): —, (Street:) —, (City:) —, (State:) —, and described as follows: Year: —; Model (If truck, state tonage); —; Type of Body: —; (Factory or Serial No.): —; Motor No. —, is insured against direct loss or damage from the perils insured against to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and/or while in Canada and/or in Mexico, including while in building, on road, on railroad car or other conveyance, ferry or inland steamer, or coastwise steamer between ports within said limits, for the period beginning at Noon — —, —, and ending at Noon — —, —, Standard Time, for a sum not exceeding — dollars (\$—), being list price including all standard factory equipment F. O. B. Detroit, Michigan, subject to all the conditions, stipulations, provisions, exclusions and warranties set forth in said policy or which appear hereon.

The interest of the Chrysler Sales Corporation, and/or of purchasers, owners, dealers, finance companies, banks, trust companies, persons, firms or corporations or others having an insurable interest in said automobile are protected under this insurance with the same force and effect as if they severally accepted same, and the existence of all such interests is permitted.

Loss, if any, to be adjusted with purchaser, though to be paid subject to all conditions of this certificates only to, Name: — —, Address: —, for account of all interests.

This insurance does not in any event cover loss or damage by confiscation of said car while used in violation of any liquor or prohibition statute.

The insurance hereunder shall be considered as excess insurance in the event of any other insurance covering the hazards hereunder insured and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted.

It is a consideration of this insurance that the within described automobile shall be continuously equipped with locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

This insurance is not subject to cancellation.

Anything herein contained to the contrary notwithstanding this insurance shall not be vitiated by the existence of any lien or mortgage nor by the purpose for which the automobile is used (except the unlawful transportation of liquor) nor by the nature of the assured's occupation or business nor by the location where the automobile is kept.

This insurance may be transferred by the original holder of this certificate, mailing notice of such transfer together with this certificate and \$1.50 to insurer, said insurance continuing for the unexpired term originally insured, protecting the transferee's interest, providing consent in writing of any company financing the same shall first have been obtained to such transfer.

This certificate shall not be valid until countersigned by duly authorized agent at Detroit, Michigan.

Countersigned at Detroit, Mich, (Date:) — — —, by — — —, Agent.

#### Provisions Required to be Stated by Law

[fol. 41]

#### Form of Certificate

The policy under which this certificate is issued is subject to the following conditions:

#### Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

### Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto;

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership, or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

### Conditions

**Limitation of Liability and Method of Determining Same.**—This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly with proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

**Abandonment.**—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

**Loss for Which Bailee for Hire is Liable.**—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which a bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 42] way of loan of money equivalent of such loss or damage, which loan shall in no circumstance affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

**Noon.**—The word "Noon" herein means noon of standard time at the place the contract was made.

**Misrepresentation and Fraud.**—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or

in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

**Protection of Salvage.**—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

**Notice and Proof of Loss.**—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for

fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the County and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him the the expenses of appraisal and umpire shall be paid by parties equally.

**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company and if ap-[fols. 43 & 43½] praisal is demanded, then not until sixty days after an award has been made by the appraisers.

**Subrogation.**—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

**Suit Against Company.**—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commended within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the law of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its

agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

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[fol. 44] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF B. E. HUTCHINSON—Filed August 22, 1925

STATE OF WISCONSIN,  
County of Douglas, ss:

B. E. Hutchinson being first duly sworn, states: That he is an officer, to-wit: the Vice President and Treasurer of the Chrysler Sales Corporation, named in the complaint in this action; that he has read the complaint in this action and knows the contents thereof, and that to his knowledge the facts as therein alleged are true; that the contract of insurance between the Chrysler Sales Corporation and the Palmetto Fire Insurance Company referred to in said complaint, was made June 16, 1925, at Detroit, Michigan, and was in the City of Detroit, Michigan, then and there duly signed, delivered and accepted by said Insurance Company and the Chrysler Sales Corporation and the Commercial Credit Company named and referred to in said contract.

That on August 4th, 1925, at the City of Detroit, in the state of Michigan, a further contract or insurance policy was entered into between said Palmetto Insurance Company and said Chrysler Sales Corporation, a copy of which is hereto attached marked Exhibit "A," and consisting of printed pages 28 to 59 inclusive, attached to and made a part hereof; that said contract or policy was signed, delivered and accepted at Detroit, Michigan, on August 4th, 1925, and was then and there duly consented to by the Commercial Credit [fol. 45] Company.

Affiant further says that the Chrysler Sales Corporation, has not, at any of the times mentioned in the complaint herein, nor at any other time maintained any agencies in



the state of Wisconsin, nor had any office for the transaction of business in the state of Wisconsin, nor has it transacted or pretended to transact any business in the state of Wisconsin; but that the Chrysler Sales Corporation sells in Interstate Commerce all the cars sold by it. All cars are sold f. o. b. Detroit and are delivered to common carrier at Detroit, unless the distributor or dealer comes into Michigan and personally obtains the car there. However, cars sold to Michigan distributors and dealers are sold in Michigan.

That said Chrysler Corporation has many customers in the state of Wisconsin, but said customers buy in Interstate Commerce and that all cars sold by said Chrysler Sales Corporation are sold pursuant to contracts of sale involving and to be performed by shipments in interstate commerce;

That the agencies mentioned in the complaint are wholesale dealers who are simply customers of said Chrysler Sales Corporation; such wholesale customers are commonly known in the trade as "distributors;" the sub-dealers, who buy from the distributors are commonly known as "dealers;" each is in business for himself and not acting as agent for the Chrysler Sales Corporation.

All orders for cars from distributors and dealers in the state of Wisconsin to the Chrysler Sales Corporation are accepted or rejected at Detroit, Michigan, by the Chrysler Sales Corporation; the Chrysler Sales Corporation has never sold any car or cars in Wisconsin, but as stated in the complaint herein, has built up a large and valuable business with Wisconsin customers.

[fol. 46] Affiant further says that such business will be irreparably damaged unless a temporary injunction is granted restraining the defendant herein, as prayed in the complaint, pending this action, and that unless such temporary injunction is issued, and final decree which may be rendered in this action would be ineffectual.

That if the defendant is not now temporarily enjoined, as prayed in the complaint, the injury to the Chrysler Sales Corporation in its business will be immediate and extremely serious.

Affiant further says that if the said laws of Wisconsin should be construed as claimed by the defendant herein, said laws must be held void as in conflict with the full faith and credit clause of the Federal constitution, and also as in



violation of the Federal Constitution insofar as the same prevents and prohibits a state from imposing a burden on Interstate Commerce.

B. E. Hutchinson.

Subscribed and sworn to before me this 22nd day of August, 1925. Margaret M. Hoit, Notary Public, Douglas County, Wisconsin. My commission expires Nov. 27, '27. (Notarial Seal.)

[File endorsement omitted.]

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[fol. 47] "EXHIBIT A" TO AFFIDAVIT OF B. E. HUTCHINSON

Non-valued Fire, Theft & Transportation Form

No. A-9657. Automobile Policy

Palmetto Fire Insurance Company, Sumter, South Carolina,

In consideration of the warranties and the premium herein-after mentioned, does issue the Assured named therein, and legal representatives, for the term herein specified, to an amount not exceeding the amount of insurance herein specified, against direct loss or damage, from the perils insured against, to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) of the automobiles described herein while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and Canada and Mexico, including while in building, on road, on railroad car or other conveyance ferry or inland steamer, or coastwise steamer between ports within said limits,

Amount: \$ As specified. Premium: As agreed.

Name and Address of assured: Chrysler Sales Corporation, Detroit, Michigan, and/or for account of whom it may concern as hereinafter specified.

The term of this policy begins at Noon on the 1st day of July, 1925, and ends at Noon on the 1st day of July, 1926 Standard Time. (All certificates issued hereunder, however, remaining in full force and effect for the term specified in such certificates).

Amount of Insurance: As specified. Dollars (\$—).

### Warranties

The following are statements of facts known to and warranted by the Assured to be true and this policy is issued by the Company relying upon the truth thereof:

1. Assured's occupation or business is: This information not required by insurer.

2. The following is the description of the automobiles: Information not required except as hereinafter specified.

3. The facts with respect to the purchase of the automobile described are as follows: This information not required by insurer except as hereinafter specified.

4. The uses to which the automobile described are and will be put are: This information not required by insurer.

5. The automobile described is usually kept in garage, located: This information not required by insurer.

### Non-vitiating Clause

Anything hereinafter contained to the contrary notwithstanding, the insurance provided for herein shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which any automobile covered by such insurance shall be used (except the unlawful transportation of liquor) nor by the nature of the occupation or business of any of the Assured, nor by the location where any such automobile is kept.

### [fol. 48] Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agree-

ment, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

### Exclusions

**Property Excluded.**—This Company shall not be liable for;

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

**War, Riot, etc.**—(b) Loss or damage caused directly or indirectly by Invasions, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto:

**Title and Ownership.**—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership; or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the insurable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

**Encumbrance.**—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

### Conditions

**Limitation of Liability and Method of Determining Same.**—This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly within proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate

shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

**Abandonment**—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company, and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

**Loss for Which Bailee for Hire is Liable**—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 49] way of loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or for account of the Assured from the bailee after deducting cost and expense of collection.

**Noon**.—The word "Noon" herein means noon of standard time at the place the contract was made.

**Misrepresentation and Fraud**.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

**Protection of Salvage**.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage — any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as

done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

**Notice and Proof of Loss.**—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company, such umpire shall be selected by a judge of a court of record in the county and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the

expenses of appraisal and umpire shall be paid by parties equally.

**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company, and if ap-[fol. 50] praisal is demanded, then not until sixty days after an award has been made by the appraisers.

**Subrogation.**—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

**Suit Against Company.**—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commended within twelve(12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the law of such State.

This policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

[fol. 51] EXHIBIT "A" TO EXHIBIT A TO AFFIDAVIT OF B. E.  
HUTCHINSON

Rider attached to and forming part of policy No. A-9657 of the Palmetto Fire Insurance Company herein called "Insurer." This rider shall supersede and take the place of anything to the contrary in the conditions and provisions of the policy to which it is attached.

I. Definitions

The following words whether singular or plural, unless the context otherwise requires, shall be given the following meanings:

Chrysler shall mean Chrysler Sales Corporation, a Michigan Corporation of Highland Park, Michigan, its successors and assigns.

Finance companies shall mean banks, trust companies, finance or credit companies, corporations, partnerships, trusts, dealers, individuals and other organizations who may finance the retail sale or lease of Chrysler cars.

Chrysler cars shall mean new and unused commercial passenger automobiles sold or distributed by Chrysler and which have been or may hereafter be manufactured by Chrysler Motor Corporation, a Delaware corporation, of Detroit, Michigan, its successors or assigns.

To finance shall mean to purchase or loan upon, or to cause to be purchased or loaned upon, to discount or otherwise acquire the notes and/or security instruments made and given to dealers by purchasers in connection with the purchase or lease of Chrysler cars at retail.

[fol. 52] Dealer shall mean persons, firms or corporations selling or leasing, or agreeing to sell or lease Chrysler cars at retail.

Purchaser shall mean persons, firms or corporations purchasing or agreeing to purchase Chrysler cars at retail for cash or on deferred payments, or to lease Chrysler cars at retail on the deferred payment plan.

Notes shall mean promissory notes or other obligations made and given by purchasers to dealers as evidence of the deferred payments owing on the retail purchase or lease price of Chrysler cars when they are sold or leased by dealers to purchasers upon a deferred payment plan.



Term of this policy shall mean the period during which insurance hereunder may become effective, to wit: from July 1st, 1925, to June 30th, 1926, both dates inclusive.

Security instruments shall mean conditional sale contracts, chattel mortgages, leases, bailments, contracts, and/or other instruments reserving or creating title, liens, security or other property interest in Chrysler cars sold at retail to purchasers on a deferred payment plan.

Policy shall mean this contract of insurance.

Certificate shall mean memorandum of insurance under this policy issued or to be issued as herein provided.

Insurance shall mean insurance against the perils insured against in the policy and/or certificate.

## II. Assured and Coverage

The Insurer does hereby insure finance companies, dealers and purchasers as their interests may appear against [fol. 53] loss or damage caused by or arising out of any of the hazards mentioned in the printed part of this policy, to Chrysler cars, provided, however, that the lawful seizure and/or confiscation of any Chrysler car for violation of any liquor or prohibition statute by or with the knowledge or consent of the purchaser, shall terminate the liability thereunder of Insurer as to the purchase or leases of such car, but shall not affect the liability hereunder of Insurer as to other parties.

All banks, trust companies, persons, firms or corporations with or to whom finance companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments shall be protected by this insurance.

Coverage hereunder and under certificates issued hereunder shall be for one hundred per cent (100%) of the list price, F. O. B. Detroit, of each Chrysler car insured hereunder, on the date of purchase or lease of said by the purchaser, including standard equipment, and any extra equipment and accessories costing in the aggregate not to exceed One hundred dollars (\$100). The limit of liability of the Insurer for loss or damage to a Chrysler car with standard equipment insured hereunder, shall be the total cash value of such car and standard equipment at the time of such loss or damage. The limit of liability of Insurer for loss or damage to extra equipment and accessories insured hereunder,



shall be seventy-five per cent (75%) of the actual cash value of such extra equipment and accessories at the time of such loss or damage, in no event to exceed the sum of seventy-five dollars (\$75.00).

Coverage hereunder and under certificates is automatically effective from the date on which (during the term of this policy) each purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, which ever shall be the earlier, and shall extend in respect to such Chrysler car for a period of twelve (12) months; provided, that in [fol. 54] every case where notes and/or security instruments shall have been given in connection with the purchase of any Chrysler car, coverage on such car shall be effective from the date of such notes and/or security instruments.

It is specifically agreed that every Chrysler car sold at retail during the term of this policy, shall be automatically covered hereunder, notwithstanding any failure or omission to issue a certificate or any failure or omission to report the sale of such car as required herein. No act or omission of any beneficiary hereunder shall vitiate or affect the indemnity or coverage of any other party insured hereunder, who is not responsible for such act or omission to act, it being the intent of this policy that only parties responsible for acts or omissions to act shall suffer thereby.

Anything to the contrary herein notwithstanding, it is expressly agreed that no Chrysler car shall be covered hereby which does not, when the purchaser takes delivery of the same or receives a bill of sale thereof, carry a Class A rating for fire insurance by the National Board of Fire Underwriters or which is not continuously equipped with a locking device approved by the Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

Coverage hereunder on any Chrysler car shall not be vitiated or affected because such Chrysler car is operated across the border of the United States and into the territory of the Government of Mexico.

### III. Certificates

Insurer shall issue certificates to purchasers in the form attached hereto, which certificates and insurance evidenced [fol. 55] thereby, shall not be subject to cancellation by

either party. If sales of Chrysler cars are financed there shall be issued at the request of finance companies financing same, duplicates of certificates.

#### IV. Transfers

If any original purchaser shall transfer his interest in a Chrysler car, insured hereunder, and shall mail a notice of such transfer together with his certificate, and \$1.50 to the insurer at its office No. —, Detroit, Michigan, (said charge being to defray the cost of issuing a new certificate), insurance hereunder shall inure to the benefit of the transferee for the unexpired term originally insured, and Insurer will issue a new certificate for such unexpired term to such transferee; provided, however, that if the sale of the car so transferred has been financed, the consent in writing of any finance company financing the same shall first be obtained to such transfer.

#### V. Excess Insurance

In all cases where Insurer disclaims liability to a purchaser on account of other insurance, coverage hereunder shall be considered as excess insurance, and shall not apply to any loss or damage until amount recoverable from such other insurance shall have been exhausted; if full recovery has not been made within 90 days of a claim for loss from such other insurance of all amounts owing on any note for a Chrysler car, insurer shall advance the amount of its liability hereunder to the insured authorized to receive payment of the loss or damage as a loan without interest, the [fol. 56] repayment of which shall be conditioned upon and be required to be made only to the extent of any recovery from such other insurance.

In all cases where Insurer disclaims liability to a purchaser, Insurer may pay the amount of its liability hereunder to the party authorized to receive the same, other than purchaser, as a loan without interest, instead of as payment of a loss, the repayment of which loan to the Insurer shall be conditioned upon and be required to be made only to the extent of any recovery from the purchaser by the party to whom such loan has been made by the Insurer. If any action is brought against purchaser at the request

of Insurer, Insurer shall pay all attorney fees, expenses and costs in such action.

#### VI. Disclaimer of Liability by Insurer

If any claim or legal action be made or commenced against Chrysler, or any finance company, by purchaser, arising out of the refusal of insurer to pay any loss under this policy, or a certificate issued hereunder, Insurer shall defend against such claim or action and pay all attorney fees, costs and expenses incurred and/or judgments recovered in any such claim or action.

#### VII. Reports

Commencing with the 15th day of August, 1925, and on the 15th day of each calendar month thereafter until and including July, 1926, Chrysler shall send a monthly report to the Insurer at — Detroit, Michigan, of all cars insurance with respect to which is hereunder contemplated and provided for. Such reports shall show separately the number of all Chrysler four-cylinder cars open and closed, Chrysler six-cylinder cars open and closed, commercial chassis and commercial cars with bodice with serial and motor numbers respectively thereof. The report of August 15, 1925, shall show the cars in possession of or in transit to distributors and/or dealers in the United States on July 1, 1925, and cars thereafter shipped during the month ending July 31, 1925. Subsequent reports shall show shipments to distributors and/or dealers in the United States during the calendar month preceding the month in which the report is sent.

Chrysler further agrees to submit such other information as Insurer may from time to time reasonably require regarding Chrysler cars that are or may be covered by insurance hereunder and to permit Insurer from time to time to check its records against Chrysler records in regard to such Chrysler cars.

#### VIII. Premiums

Agreed premiums are to be paid by Chrysler to Insurer through Alexander & Alexander, Inc., General Agents, at —, Detroit, Michigan, for insurance hereunder on or

before the 15th day of each month beginning August 15, 1925, and ending July 15, 1926, for all Chrysler cars reported by its distributors and dealers as sold and/or leased during the preceding calendar month and insured hereunder.

Such report shall be accompanied by an itemized statement.

### IX. Payment of Losses

Payment of all losses claimed hereunder shall be made by purchaser unless the purchase of a car with respect to which claim is made, has been financed in which case payment of the loss shall be made to any finance company, dis-[fol. 58] tributor or dealer financing the same, for account of all parties as their respective interest may appear.

### X. Examination

All parties insured hereunder shall submit to examination under oath by any person named by Insurer as often as shall be required and shall subscribe to same and shall produce for examination all books of account, bills, notes, or other records, or certified copies thereof if the originals cannot be found, in respect to any matters pertaining to coverage of any Chrysler car hereunder at such reasonable place as may be designated by Insurer or its representatives and to permit extracts and copies thereof to be made.

### XI. Replacements

If Insurer should so elect Chrysler will sell to Insurer new Chrysler cars at the wholesale list price F. O. B. Detroit on date of loss to replace any similar Chrysler car as to which there has been filed with the Insurer a claim for total loss under this policy and/or certificate issued hereunder.

### XII. Recording

The recording or filing of security instruments shall not be required by Insurer but shall be optional with the finance company interested and/or holders, and/or owners of such security instruments.

### XIII. Cancellation

This policy and certificates are not subject to cancellations by Insurer or by any of the insured; this policy shall terminate June 30, 1926, unless previously renewed by mutual agreement; provided, however, that coverage under certificates issued hereunder at any time during the terms of this policy shall be and remain in full force as to all parties concerned until the expiration dates named in such certificates.

### XIV. Qualified Company.

Insurer warrants that it is qualified to do business in the State of Michigan, and that this policy is so executed and all certificates thereunder shall be so issued as to comply with and conform to all laws State or Federal at any time applicable, and agrees to do all things which may be necessary to do, in order to comply with said laws and to carry out the terms, provisions and purposes of this policy and of certificates issued hereunder, it being expressly understood that it is one of the purposes of this policy that Insurer shall issue certificates of insurance hereunder with respect to every Chrysler car sold at retail throughout the United States during the term of this policy.

### XV. Michigan Law and Acceptance

This policy and the certificates issued hereunder are to be construed in accordance with and governed by the laws of the state of Michigan, and acceptance of this policy by Chrysler at Detroit, Michigan, shall put the same in full force and effect with respect to all parties covered hereunder or under any certificate issued hereunder.

Palmetto Fire Insurance Co., by Edwin J. Carter,  
Agent.

Approved and accepted by P. Moses, President Palmetto Fire Insurance Co.

[fol. 60] It is understood and agreed that Policy No. A9657 executed the 4th day of August, 1925, by the Palmetto Insurance Company shall take the place of and be substituted for Policy No. A-9652, executed on or about the 16th day of June, 1925, which is hereby abrogated.

Certificate issued under said Policy A-9652 shall be considered as issued under this policy and be governed by the terms hereof.

Executed at Detroit, Michigan, this 4th day of August, 1925.

Chrysler Sales Corporation, by (S.) H. A. Davies,  
Asst. Treas. Palmetto Fire Insurance Company,  
by (S.) Edwin J. Carter, Agent.

The above contract is consented to by us.

Commercial Credit Company, by — — —.

[fol. 61] Form of Certificate. No. —

Purchaser's Original Copy

### Non-valued Fire, Theft, & Transportation Automobile Form

This is to certify that under policy No. — of the Palmetto Fire Insurance Company of Sumter, South Carolina, issued to Chrysler Sales Corporation, covering for account of whom it may concern, the new Chrysler Passenger or Commercial car, sold or leased and delivered to Name of Purchaser: — — —; Address (No.): — Street:) —, (City:) —, (State:) —, and described as follows: Year: —, Model: —; Type of Body (If truck, state tonnage): —; Factory or Serial No.: —; Motor No.: —, is insured against direct loss or damage from the perils insured against to the body, machinery and all standard factory equipment (but exclusive of extra equipment and accessories) while within the limits of the United States (exclusive of Alaska, the Hawaiian and Philippine Islands and Porto Rico) and/or while in Canada and/or in Mexico, including while in building, on road, on railroad car or other conveyance, ferry or inland steamer, or coastwise steamer between ports within said limits, for the period beginning at Noon — —, —, and ending at Noon — —, —, Standard Time, for a sum not exceeding — dollars (\$—), being list price including all standard factory equipment F. O. B. Detroit, Michigan, subject to all the conditions, stipulations, provisions, exclusions and warranties set forth in said policy or which appear hereon.

The interest of the Chrysler Sales Corporation, and/or of purchasers, owners, dealers, finance companies, banks, trust compaines, persons, firms or corporations or others having an insurable interest in said automobile are protected under this insurance with the same force and effect as if they severally accepted same, and the existence of all such interests is permitted.

Loss, if any, to be adjusted with purchaser, though to be paid subject to all conditions of this certificate only to, Name, — — —; Address: —, for account of all interests.

This insurance does not in any event cover loss or damage by confiscation of said car while used in violation of any liquor or prohibition statute.

The insurance hereunder shall be considered as excess insurance in the event of any other insurance covering the hazards hereunder insured and shall not apply to any loss until the amount recoverable from such other insurance shall have been exhausted.

It is a consideration of this insurance that the within described automobile shall be continuously equipped with locking device approved by Underwriters Laboratories of the National Board of Fire Underwriters and bearing their label.

This insurance is not subject to cancellation.

Anything herein contained to the contrary notwithstanding this insurance shall not be vitiated by the existence of any lien or mortgage, nor by the purpose for which the automobile is used (except the unlawful transportation of liquor) nor by the nature of the assured's occupation or business, nor by the location where the automobile is kept.

This insurance may be transferred by the original holder of this certificate, mailing notice of such transfer together with this certificate and \$1.50 to insurer, said insurance continuing for the unexpired term originally insured, protecting the transferee's interest, providing consent in writing of any company financing the same shall first have been obtained to such transfer.

This certificate shall not be valid until countersigned by duly authorized agent at Detriot, Michigan.

Countersigned at Detroit, Mich., (Date:) — — —, by — — —, Agent.

## Provisions Required to be Stated by Law

[fol. 62]

### Form of Certificate

The policy under which this certificate is issued is subject to the following conditions:

#### Perils Insured Against (Except as Hereinafter Provided)

(a) Fire arising from any cause whatsoever; and lightning;

(b) While being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance, including general average and salvage charges for which the Assured is legally liable.

(c) Theft, robbery or pilferage, excepting by any person or persons in the Assured's household or in the Assured's service or employment, whether the theft, robbery or pilferage occur during the hours of such service or employment or not, and excepting also the wrongful conversion, embezzlement, or secretion by a mortgagor or vendee in possession under mortgage, conditional sale or lease agreement, and excepting in any case, other than in case of the theft of the entire automobile described herein, the theft, robbery or pilferage of tools and repair equipment.

#### Exclusions

Property Excluded.—This Company shall not be liable for:

(a) Loss or damage to robes, wearing apparel, personal effects or extra bodies.

War, Riot, etc.—(b) Loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power, or by order of any civil authority.

This entire policy shall be void unless otherwise provided by agreement in writing added hereto;

Title and Ownership.—(a) If the interest of the Assured in the subject of this insurance be other than unconditional and sole ownership, or in case of transfer or termination of the interest of the Assured other than by death of the Assured or in case of any change in the nature of the in-



surable interest of the Assured in the property described herein either by sale or otherwise; or

(b) If this policy or any part thereof shall be assigned before loss.

Encumbrance.—Unless otherwise provided by agreement in writing added hereto, this Company shall not be liable for loss or damage to any property insured hereunder.

(a) While encumbered by any lien or mortgage.

### Conditions

Limitation of Liability and Method of Determining Same.—This Company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated accordingly with proper deduction for depreciation however caused (and without compensation for the loss of use of the property), and shall in no event exceed what it would then cost to repair or replace the automobile or such parts thereof as may be damaged with other of like kind and quality; such ascertainment or estimate shall be made by the Assured and this Company, or if they differ, then by appraisal as hereinafter provided.

Abandonment.—It shall be optional with this company to take all or any part of the property at the appraised value where appraisal is had as hereinafter provided, but there can be no abandonment thereof to this Company; and where theft is insured against the Company shall have the right to return a stolen automobile or other property with compensation for physical damage at any time before actual payment hereunder.

Loss for Which Bailee for Hire is Liable.—This Company shall not be liable for loss or damage to any property insured hereunder while in the possession of a bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such bailee. Where loss or damage occurs for which a bailee may be liable and which would otherwise be covered hereunder, this Company will advance to the Assured by [fol. 63] way of loan the money equivalent of such loss or damage, which loan shall in no circumstances affect the question of the Company's liability hereunder and shall be repaid to the extent of the net amount collected by or

for account of the Assured from the bailee after deducting cost and expense of collection.

Noon.—The word "Noon" herein means noon of standard time at the place the contract was made.

Misrepresentation and Fraud.—Any certificate issued hereunder shall be void if the Assured named therein has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud, attempted fraud, or false swearing by the Assured touching any matter relating to the insurance therein provided for or the subject thereof, whether before or after a loss.

Protection of Salvage.—In the event of loss or damage occasioned by a peril insured against herein the Assured shall protect the property from further loss or damage and any such further loss or damage occurring directly or indirectly from a failure to protect shall not be recoverable under this certificate. Any such act of the Assured or this Company or its agents in recovering, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and all reasonable expenses thus incurred shall constitute a claim under this policy; provided however that this Company shall not be responsible for the payment of a reward offered for the recovery of the insured property unless authorized by the Company.

Notice and Proof of Loss.—In the event of loss or damage the Assured shall give forthwith notice thereof in writing to this Company; and within sixty (60) days after such loss, unless such time is extended in writing by this Company, shall render a statement to this Company signed and sworn to by the Assured, stating the place, time and cause of the loss or damage, the interest of the Assured and of all others in the property, the sound value thereof and the amount of loss or damage thereon, all encumbrances thereon, and all other insurance whether valid or not covering said property; and the Assured, as often as required, shall exhibit to any person designated by this Company all that remains of the property insured and submit to examinations under oath by any person named by this Company, and subscribe the same; and as often as required, shall produce for examination all books of account, bills, invoice, and other vouchers, or certified copies thereof if originals be lost, at

such reasonable place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**Appraisal.**—In case the Assured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon such umpire then, on request of the Assured or this Company such umpire shall be selected by a judge of a court of record in the County and State in which the property insured was located at time of loss. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item, and failing to agree shall submit their differences only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of sound value and loss of damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by parties equally.

**Payment of Loss.**—This Company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act, or proceeding on its part relating to the appraisal, or to any examination herein provided for; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by this Company and if appraisal [fols. 64 & 64½] is demanded, then not until sixty days after an award has been made by the appraisers.

**Subrogation.**—This Company may require from the Assured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

**Suit Against Company.**—No suit or action on this policy for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the foregoing requirements, nor unless commended within twelve (12) months next after happening of the loss; provided that where such limitation of time is prohibited by the laws of the State wherein this

policy is issued, then and in that event no suit under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such State.

This Policy is made and accepted subject to the provisions, exclusions, conditions and warranties set forth herein or endorsed hereon, and upon acceptance of this policy, the Assured agrees that its terms embody all agreements then existing between himself and the Company or any of its agents relating to the insurance described herein, and no officer, agent or other representative of this Company shall have power to waive any of the terms of this policy unless such waiver be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the Assured unless so written or attached.

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[fol. 65]      IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF FACTS—August 22, 1925

Proceedings in the Above entitled Cause Before Hon. Evan A. Evans, Circuit Judge, and Hon. C. Z. Luse and Hon. F. A. Geiger, District Judges, at Superior, Wisconsin, August 22, 1925.

It is understood and agreed between the parties that this stipulation shall apply to both cases (Chrysler Sales Corporation vs. W. Stanley Smith and Clark Motor Company vs. W. Stanley Smith).

It is agreed that it may be considered that the defendant has filed in the case of Clark Motor Company a verified answer containing substantially the same allegations as are contained in the verified answer in the case of the Chrysler Sales Corporation which has just been served this morning.

It is also stipulated that there may be deemed to be added to the complaint in each case the matters set up in the affidavit of B. E. Hutchinson filed in each such case today.

It is conceded that the Chrysler Sales Corporation is not licensed to do business in the State of Wisconsin.

Oral arguments were made following the foregoing.

[fol. 66] Reporter's certificate to foregoing paper filed January 5, 1926, omitted in printing.

[File endorsement omitted.]

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[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed August 22, 1925

The above named defendant in answer to the bill of complaint in the above action admits, denies and alleges as follows:

1. Admits the allegations in paragraph 1 of the complaint.
2. Admits the allegations in paragraph 2 of the complaint.
3. Admits the allegations as to the citizenship of the respective parties as alleged therein and that it is claimed that the cause of action arises under the constitution and laws of the United States but denies that any such question is involved.
4. Admits the allegations of paragraph 4 of the complaint.
5. Admits the allegations in paragraph 5 as to the plaintiff's being engaged in the business of making and selling automobiles throughout the United States and the State of Wisconsin and other places. As to the expense of such business, the defendant has no information.
6. Answering the allegations in paragraph 6 of said bill of complaint the defendant admits that the plaintiff has been transacting business selling and distributing automobiles in the state of Wisconsin and elsewhere and denies any information or knowledge as to the amount or extent of such business.
7. In answer to the allegations in paragraph 7 of said bill of complaint, this defendant admits that the Palmetto Fire Insurance Company of South Carolina was licensed

to do insurance business in the State of Michigan, but alleges that it was not licensed to do such insurance business in the State of Wisconsin but denies that it was not doing such insurance business in the State of Wisconsin, and admits the execution and issuance of the general contract and policy, a copy of which is attached to said bill of complaint and marked Exhibit A, but denies that the same was to be performed in the State of Michigan or that it was a Michigan contract or policy as to the automobiles sold in the State of Wisconsin and alleges that the so-called certificate of insurance issued to the Wisconsin purchasers of cars were and are the insurance policies and contracts of insurance in Wisconsin and as so issued and delivered is the transaction of insurance business in Wisconsin.

8. Defendant admits and alleges that it was a part of said insurance contract and plan of doing business that whenever an automobile was sold and delivered in the State of Wisconsin, a so-called certificate in the form attached to said complaint was to be and was issued to the purchaser of such automobile, which defendant alleges was in effect an insurance policy and contract insuring the purchaser's automobile against the risks set out in such certificate and policy contract and defendant admits and alleges that such certificates and policy contracts were in fact, and were intended to be insurance policies and contracts issued as in- [fol. 69] surance policy contracts on property located in the State of Wisconsin and were so issued and delivered in Wisconsin without being signed by or delivered or issued by or through a resident agent as required by the laws of Wisconsin and defendant alleges that no books or records of such insurance contracts were made or kept by an agent or in any other manner in any office in the State of Wisconsin as required by law. Defendant denies that under said plan, only the plaintiff pays or is liable to pay the premium on said policies and alleges the fact to be that each of the purchasers of such cars in the State of Wisconsin is charged and pays for such certificate or policy contract a premium which is charged in and is a part of the cost and purchase price of such automobiles, and which insurance premium is paid by the purchasers of such automobiles in Wisconsin as a part of the purchase price of such automobiles. Defendant alleges that such plan and scheme was devised and is being so carried out as a conspiracy for the express pur-

pose of evading the laws of Wisconsin and attempting to avoid the necessity of paying a license fee and obtaining a license for the transaction of such business under the laws of Wisconsin and to avoid the necessity of keeping books and records in the State of Wisconsin as required by the laws of the state and to prevent the insurance commissioner from having any knowledge of or supervision over such business or the method of its transaction, which defendant alleges was the purpose of such laws.

9. In answer to the allegations in paragraph 9 of the said bill of complaint, the defendant admits and alleges that if the plaintiff or said insurance company can transact such insurance business in the state of Wisconsin as alleged in said bill of complaint, without having to pay a license fee [fol. 70] and obtaining a license and subjecting itself and such business to the laws of Wisconsin for the conducting of an insurance business in this state, it can afford to do such business cheaper and furnish such insurance at a lower rate than a responsible company could do who has paid the required license fee and who maintains agents in the State of Wisconsin and does such business in accordance with the laws of the state. But defendant alleges that that is no excuse or justification for doing such business in violation of the laws of the State which were made in part for the protection and benefit of the persons insured.

In further answer to said allegations, defendant denies that the insurance on such automobiles in the state of Wisconsin comes into effect under the Michigan contract as a Michigan contract and alleges the fact to be that said so-called Michigan policy of insurance has no effect and does not insure such cars in Wisconsin but the scheme and plan of doing business under such arrangement makes the said alleged certificate a separate insurance contract or policy of insurance in Wisconsin as to each car when the same is so issued and delivered to the purchaser of such cars in Wisconsin, and because they are so issued without the payment of a license fee and without the signature of a local or resident agent, on such insurance contracts, the same are unauthorized, illegal and are so issued in violation of the laws of this state. And whether purchasers for cash are charged the same price as purchasers on credit, is not material and does not change the character of said transaction or make said business legal under the laws of Wisconsin.



10. In answer to the allegations in paragraph 10 of said [fol. 71] bill of complaint, defendant denies that under said scheme, the dealers in such cars are in no way agents of the plaintiff. Defendant alleges that whether the business is conducted direct or in the manner set forth in said allegations, the fact remains that such scheme and plan was gotten up and is being used and such business is so carried on in violation of the provisions of the Wisconsin Statutes and it was so intended to evade and nullify said laws and avoid the necessity of employing agents in Wisconsin, paying license fees and obtaining a license under the laws of the state of Wisconsin, and submitting such business to the supervision of the insurance commissioner of Wisconsin. Defendant further alleges in answer to the allegations of paragraph 10 of said bill of complaint, that when the so-called certificate alleged therein is delivered to the purchaser of such cars in Wisconsin, it becomes and is, in effect, an insurance policy and contract of insurance issued on such car in the State of Wisconsin, without a license and without the signature of a local or resident agent thereon, and is so done in violation of the laws of Wisconsin.

11. In answer to the allegations in paragraph 11 of said bill of complaint, defendant denies that the so-called dealer or distributor in Wisconsin takes no part in writing or placing or in the payment of insurance in Wisconsin and alleges the fact to be that under said plan, every such sale of an automobile is a sale of insurance in Wisconsin and every so-called certificate so issued and delivered is intended to be and is in effect an insurance policy and contract of insurance and is the transaction of insurance business in Wisconsin within the provisions of the Wisconsin Statutes and one of the inducements and considerations for the sale of such automobiles under such plan is the fact that the purchase price fixed for the sale of the automobile includes the insurance covered by the insurance policy certificate without any additional consideration and the plaintiff and insurance company receives such consideration as a part of the purchase price of such cars. Defendant denies the allegation that neither the distributor nor the dealer receives any commission or other compensation in any form on or by virtue of the insurance protection afforded to the retail purchaser and alleges the fact to be that the cost of



such insurance is included in and is a part of the consideration for the purchase of such cars and is an inducement for making such sales and purchases.

12. In answer to the allegations in paragraph 12 of said bill of complaint, the defendant admits that Chrysler cars are being sold in large numbers in Wisconsin under such plan and defendant alleges that such business has been so increased in part because it includes the issue of such insurance policy certificates as a part of the purchase price of such automobiles which defendant alleges is doing and transacting insurance business in the State of Wisconsin on property in the state without a license therefor and without such policy contracts being signed by an agent or delivered by or through an agent in the state of Wisconsin, and without any record thereof being made or kept in Wisconsin, as required by law.

Further answering the allegations in paragraph 12 of said bill of complaint, defendant admits that he has ruled and held and still holds that the said plan of doing such business in the State of Wisconsin is the transaction of insurance business in Wisconsin in violation of the laws of Wisconsin [fol. 73] and defendant admits that he has threatened to enforce the provisions of the Wisconsin Statutes as to the transaction of said insurance business in the State of Wisconsin without the payment of a license fee and the obtaining of a license therefor as provided by the law of this state so that he can have supervision over such business.

Defendant denies that the purchasers of such cars in Wisconsin, under such plan and method of doing business, are protected by or insured under the contract made in Michigan as alleged in such paragraph, and alleges the fact to be that such alleged certificate which is so issued to the purchaser of such cars in Wisconsin is the insurance contract and policy of insurance which is delivered in accordance with such plan direct to the insured purchaser of such cars in the state of Wisconsin and is so issued as an insurance contract and policy of insurance on property in the State of Wisconsin for the benefit of the resident owners in Wisconsin and is so done without any license fee having been paid or license issued or obtained therefor. Defendant admits and alleges that he has advised the dealers and agents of such cars and plaintiff and the said Palmetto Fire Insurance Company that they are violating the laws of Wis-

consin by doing such business in the state of Wisconsin and that he will enforce such laws.

Defendant alleges that he took such action because he considered it was his duty under the laws to so act and that he so acted as soon as he learned of the methods of conducting said business although he is now advised that a large amount of said business has been so done without any license and in violation of the laws of Wisconsin.

Defendant denies that the plaintiff had no adequate [fol. 74] remedy at law and alleges that it has full and complete remedy, and alleges that under the terms of its policy contract it can and should compel said insurance company to qualify and do such business as required by the laws of the State of Wisconsin.

13. In answer to the allegations in paragraph 13 of said bill of complaint, defendant denies that his threats or actions have been or are unlawful and without sanction or support in the laws of Wisconsin, and denies that neither the plaintiff nor any dealer or distributor of Chrysler cars in Wisconsin is violating or threatening to violate the laws of the state of Wisconsin, and alleges the fact to be that both the plaintiff and its dealers and distributors and the purchasers of cars in the state of Wisconsin under said plan become and are parties to said illegal plan and method of carrying on and conducting and transacting such insurance business in Wisconsin by so issuing contracts of insurance to residents of Wisconsin as insurance upon their automobiles in Wisconsin and doing such insurance business in the State of Wisconsin without any license therefor and without such insurance contracts being signed by or issued through or by a resident agent in Wisconsin and denies that the statutes of Wisconsin, properly construed, have no application to the acts of plaintiff and its distributors and dealers of such cars in Wisconsin, and alleges that such business is in violation of such laws.

14. In answer to the allegations in paragraph 14 of the plaintiff's bill of complaint, defendant denies that said insurance laws of Wisconsin are unconstitutional or void and denies that said laws deny to the plaintiff and its distributors or dealers or to said insurance company the equal protection of the laws within the meaning of the Federal Constitution and denies that such insurance laws at-

tempt to illegally regulate, prohibit, or burden the making of a performance of contracts of insurance in Wisconsin, and denies that said alleged contract is made and to be performed outside the limits of the state of Wisconsin and not subject to the laws of this state, and defendant denies that his rulings and actions as insurance commissioner are or have been illegal or unconstitutional.

15. In answer to the allegations of paragraph 15 of said bill of complaint, defendant denies that the plaintiff is without remedy in the premises except in a court of equity.

Further answering said bill of complaint, defendant alleges that the Palmetto Fire Insurance Company is the real party in interest and a necessary party in said action.

For further answer to said bill of complaint, defendant alleges that such policy purports to be issued in and by virtue of the laws of Michigan, but defendant alleges that it does not conform to the form of standard insurance policy prescribed by either the laws of Michigan or Wisconsin and the whole plan and scheme is without authority of either state and is illegal, unlawful and void.

For further answer to said bill of complaint, defendant alleges that this plaintiff in carrying out its said plan of business, is selling insurance and insurance contracts in Wisconsin and is a party to such plans of selling and transacting an insurance business in Wisconsin without a license and in violation of the insurance laws of Wisconsin.

Defendant alleges that said method, plan and scheme of conducting, carrying on and transacting such business in Wisconsin and other states in such manner was and is illegal and the results of and is an illegal conspiracy by and between plaintiff, the said Palmetto Fire Insurance [fol. 75] Company, the Chrysler Corporation and the distributors and purchasers of such automobiles in Wisconsin, to evade the laws of Wisconsin and that such business is being so carried on in Wisconsin in accordance with such illegal conspiracy and plan and in violation and defiance of the laws of Wisconsin and is unlawful.

Defendant further alleges that the plaintiff in this suit is not a citizen of the United States nor of any state in the United States and is, therefore, not entitled to the rights of citizens as guaranteed by the Fourteenth Amendment to the constitution of the United States.

For further answer to said bill of complaint, defendant denies each and every allegation therein not herein admitted.

Wherefore, Defendant prays that no temporary injunction be issued in this action pending the trial and disposition of the same and that said action be dismissed with costs to defendant.

Herman L. Ekern, Attorney General; T. L. McIntosh, Assistant Attorney General, Attorneys for Defendant.

[fols. 76 & 76½] *Duly sworn to by W. Stanley Smith. Jurat omitted in printing.*

Service admitted Aug. 21, 1925, H. M. Wilkie.

[File endorsement omitted.]

[fols. 77-79] Summons and marshal's return filed Aug. 5, 1925, omitted in printing.

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[fol. 80] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO APPEAR FOR HEARING AND TEMPORARY RESTRAINING ORDER—Filed August 3, 1925

Plaintiff having applied for a temporary injunction restraining defendant as prayed in the duly verified bill of complaint and it appearing that such injunction, if granted, may suspend or restrain the enforcement of a state law by restraining the action of a state officer, on the ground of the unconstitutionality of said statutes, if such statutes should be construed as claimed by defendant, and if said statutes prohibit the acts and practices of plaintiff and customers of plaintiff as set out in said complaint, and it appearing from specific facts alleged in said verified bill that immediate and irreparable loss and damage will result to applicant, the plaintiff herein, before the matter can be heard on notice, and it appearing from said complaint that plaintiff is prima

facie entitled to interlocutory injunction as prayed, and it further appearing that the defendant is issuing declarations and statements to the effect that plaintiff and plaintiff's customers are violating the criminal and civil laws of Wisconsin and are subjecting themselves to heavy fines, forfeitures and penalties; and that said defendant is threatening to immediately cause the arrest and prosecution of distributors and dealers selling plaintiff's products in Wisconsin and that said declarations, statements and threats have already had serious effect on, and are causing irreparable injury to plaintiff's property and business, and that such arrests and prosecution would cause irreparable injury to plaintiff and plaintiff's property before any hearing or notice can be had in this matter by causing great loss of customers, dealers and good will and disruption of sales organization.

Now therefore, on motion of plaintiff, it is ordered, that defendant appear on August 22nd, 1925, at 10:00 o'clock a. m., or as soon thereafter as counsel can be heard, or at such other times as may hereafter be duly set as the time for the hearing of said application, at the court room of the above named court, in Superior, Wisconsin, and there show cause why the interlocutory injunction in said bill of complaint prayed for should not issue and I hereby call to my assistance to hear and determine the application, two other judges, to-wit: Hon. Evan A. Evans, Circuit Judge, and Hon. F. A. Geiger, District Judge.

Further ordered, that a copy of the Bill of Complaint be served on defendant at the time of the service of this order.

Further ordered, that at least five days' notice of said hearing on application for temporary injunction be given to the Governor and to the Attorney General of the State of Wisconsin and to the defendant in this action.

Further ordered, that for the reasons and on the grounds hereinbefore stated, a temporary restraining order is hereby granted without notice, to be in effect only until further order of the court and in any event to be in effect no longer than the time of the hearing and determination of said application for temporary injunction. The restraining order shall not be effective until there is filed with the clerk a bond executed by sureties approved by the clerk in the sum of \$1,000.00 conditioned upon the payment of such costs and

damages as may be incurred or suffered by any party who may be found to have been wrongfully restrained or enjoined thereby. A copy of said bond shall be served with [fols. 82 & 82½] the service of this order.

Therefore, it is ordered that until the further order of this court, or until the hearing and determination of said application for temporary injunction, defendant and his deputies, agents and employes, and all persons acting under him, be and they are hereby [restrained and enjoined from bringing or causing to be brought, or threatening to bring or cause to be brought any prosecutions or actions or proceedings for recovery of penalties or forfeitures against plaintiff, or against any dealers in or distributors of Chrysler Cars in Wisconsin, or the servants, agents or employes of them or any of them, based on or purporting to be based on or by reason of the contract of insurance made between Chrysler Sales Corporation and Palmetto Fire Insurance Company, dated June 16, 1925, whereby purchasers at retail of Chrysler cars in Wisconsin, and other parts of the United States, and other persons interested in said cars are protected in respect to loss on said cars by fire or theft, or based on or purporting to be based on or by reason of the sale of Chrysler cars Wisconsin, and the collection of the full purchase price thereof, including delivery and other charges according to the present method of selling said cars in Wisconsin, or by reason of the protection afforded purchasers of said cars in Wisconsin under said contract of insurance and from publishing or circulating statements that plaintiff or the dealers in or distributors of Chrysler cars in Wisconsin are violating the Wisconsin law or are acting as insurance agents contrary to law or otherwise.]

Dated August 3rd, 1925.

C. Z. Luse, District Judge.

[File endorsement omitted.]

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[fols. 83 & 83½] Bond on restraining order for \$1,000 approved and filed Aug. 3, 1925 omitted in printing.

[fols. 84 & 84½] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR HEARING AND MOTION FOR TEMPORARY RESTRAINING ORDER—Filed Aug. 3, 1925

To the Honorable, the Judge of the District Court for the Western District of Wisconsin:

Now comes plaintiff above named and makes this, its application for a hearing in this cause for an interlocutory injunction in accordance with Section 266 of the Judicial Code of the United States, as amended by the Act of Congress approved March 14, 1913; and plaintiff further files this, its motion for the issue of a temporary restraining order to remain in force until the application for said interlocutory injunction can be heard and determined, for the reasons and on the grounds set forth in its Bill of Complaint, and to prevent irreparable loss and damage to plaintiff.

Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toe-  
baas, Solicitors for Plaintiff.

Larkin, Rathbone & Perry, of Counsel.

[File endorsement omitted.]

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[fols. 85-87½] Notice of hearing on motion for temporary injunction with proof of service omitted in printing.

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[fol. 88] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—Filed Nov. 18, 1925

Hearing on Application for Preliminary Injunction, Before  
Evans, Circuit Judge, and Geiger and Luse, District  
Judges:

LUSE, District Judge:

Complainant, a Michigan corporation, seeks to enjoin defendant from publicly asserting that insurance issued by the

Palmetto Fire Insurance Company, a corporation of South Carolina, to Wisconsin residents owning Chrysler automobiles sold in Wisconsin, is so issued contrary to the laws of Wisconsin and from threatening to prosecute Wisconsin dealers in Chrysler cars for violating Wisconsin statutes regulating the insurance business within the state to the irreparable damage to plaintiff's business in the sale of Chrysler cars in Wisconsin. Complainant avers that the Wisconsin statutes, properly construed, do not apply to the situation and if they do, they are unconstitutional upon various grounds and particularly under the due process clause of the Fourteenth Amendment. The application was heard on the pleadings, supplemented by affidavits.

Prominent among the state statutes which merit consideration, are the following:

Sec. 201.41 (1), Wis. Sts.:

"No insurance corporation shall transact any insurance business in this state without first having paid the license [fol. 89] fees, and obtained the license therefor as required by law."

By sub-section 2 of that section each such company is required to file a statement that it desires and will accept a license within the state, revocable in case of violation of law or certain impairment of its capital; appoint the Commissioner of Insurance its attorney in fact for service of process. The section also requires the insurer to file a copy of its charter and evidence that it has a certain capital and has deposited either in this state or where domestic a certain amount in approved securities.

Sec. 201.44:

"(1). No policy of insurance shall be issued or delivered in this state by any company, except through an agent who shall be a resident of this state and hold a certificate of authority under section 209.04, for the kind of insurance effected by such policy.

"(5). Any company or person soliciting or placing insurance without complying with this section shall, in addition to other penalties provided by law, be liable personally upon such policy or contract of insurance to the same extent as the company issuing the same."



A penalty is provided for violation of this section.

Sec. 209.04:

“(1). No person, officer, or broker, agent or subagent of any insurance corporation of any kind required to pay any tax or license fee to the state shall act or aid in any manner in transacting the business of or with such corporation in placing risks or in collecting any premiums or assessments or effecting insurance therein, without first procuring from the insurance corporation a certificate of authority; nor shall any such person officer, broker, agent, or subagent, after such certificate shall have expired, or after revocation by the commissioner of insurance of such certificate or of the license of such corporation and until a new certificate or license shall have been issued to him, do or perform any such act for or in behalf of any insurance corporation. The exceptions herein shall not apply to mutual insurance corporations or fraternal societies not maintaining a lodge system which corporations or societies issue only policies of health or accident insurance or both.

“(4). Any person violating the provisions of this section shall be punished by a fine of not more than five hundred dollars for each offense. Any company violating subsection (2) of this section shall pay five times the amount of fees upon each license included in such violation.

[fol. 90] Section 209.05:

“Every person or member of a firm or corporation who solicits insurance on behalf of any insurance corporation or person desiring insurance of any kind, or transmits an application for a policy of insurance, other than for himself, to or from any such corporation, or who makes any contract for insurance, or collects any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance corporation, or advertises to do any such thing, shall be held to be an agent of such corporation to all intents and purposes, unless it can be shown that he received no compensation for such services. This section shall not apply to agents of licensed fraternal beneficiary societies, or mutual fire insurance companies of this state except those organized under sections 201.02, 201.04 and 201.16.”

## Sec. 348.488:

"Any unauthorized insurance company or other unauthorized insurer which shall hereafter take or receive any application for insurance in this state, or shall receive or collect a premium on any part thereof for such insurance, shall be punished by a fine of not more than five thousand dollars. Any officer, agent, solicitor, or broker, or other employe of any unauthorized insurance company or other unauthorized insurer who shall take or receive any application for insurance in this state, or shall receive or collect a premium or any part thereof for such insurance, shall be guilty of a felony, and shall be punished by a fine of not more than five hundred dollars, or imprisonment in the state penitentiary for one year, or by both such fine and imprisonment."

By virtue of these provisions of the Wisconsin law, among others, defendant claims that the Palmetto Fire Insurance Company and the Wisconsin dealers in Chrysler cars are violating the laws of Wisconsin and are amenable thereto as he has claimed.

The facts disclosed by the record or reasonably inferable therefrom are as follows:

Complainant is a Michigan corporation engaged in buying all of the automobiles manufactured by the Chrysler Motor Corporation and selling them at wholesale throughout the United States to distributors and dealers of whom there are some three thousand in the country and one hundred thirty in the state of Wisconsin. It has established this sales organization at great expense and its success depends in part on its ability to retain these distributors and dealers for the continuance of sales, which during the first half of 1925 exceeded one half million dollars in the state of Wisconsin. It appears that a large percentage of automobiles sold at retail in this country are sold on the deferred payment plan, the deferred payments being evidenced by promissory notes, secured by lien on the car sold, and usually assigned by the dealer to some bank or finance company which requires that insurance against fire and theft be taken out for the protection of the owner and itself from loss through those hazards. The result, so complainant alleges, has been that such banks or finance

companies have been required to maintain organizations to collect deferred payments, watch the cars against improper disposition before final payment, etc., with the further result that the cost of financing, which is invariably borne by the retail purchaser, is not uniform, usually high and often excessive. One element making for uniformity and cheapness in financing is cheap insurance and to secure that for the benefit of the retail purchasers, complainant, on June 16, 1925, entered into a contract, called in the bill an "open policy," with the Palmetto Fire Insurance Company, a South Carolina corporation, not admitted to do business in Wisconsin, and Commercial Credit Company, a Delaware corporation, the legal effect of which, together with an interpretation of the acts of the Wisconsin dealers thereunder, present the main questions in controversy. A new contract was entered into between the parties on Aug. 4, 1925, the day after this suit was commenced, modifying and clarifying to some extent the contract of June 16, but making no substantial change in the nature of the questions presented.

The purpose of the contract of June 16, is stated therein as follows:

[fol. 92] "Chrysler desires to increase the retail sale of Chrysler cars and to obtain for dealers a uniform maximum rate for financing retail sales and to provide insurance at a uniform maximum rate throughout the entire United States for the benefit of purchaser and/or other parties mentioned in the policy and certificates as their respective interests may appear on each Chrysler car purchased at retail. Chrysler proposes to advertise throughout the United States the benefits resulting to purchasers from insurance under policy and certificates issued hereunder. Commercial Credit desires to obtain so far as possible the financing of the retail sales of Chrysler cars. Insurer desires to obtain insurance in respect to all Chrysler cars sold and leased and delivered at retail to purchasers by dealers throughout the United States during the term of this policy."

By the terms of the contract Palmetto Fire Insurance Company insures "Chrysler Sales Corporation and/or for account of whom it may concern, as specified, against loss by fire or theft to the automobiles described for a period

commencing at noon July 1, 1925, and ending at noon July 1, 1926, but all certificates issued thereunder remain "in full force and effect for the term specified in such certificates." The amount of premium is not stated except "as specified," evidently referring to an undisclosed collateral agreement. Usual warranties as to the occupation or business of the assured, the uses to which the automobile will be put, and the place where same is kept, are waived by the insurer. The existence of any lien or mortgage does not vitiate the insurance. Liability of the insurer is limited to the actual cash value of the property at the time of any loss or damage, which loss or damage is to be ascertained or estimated with proper deduction for depreciation, the usual provision with regard to proof of loss within sixty days is present and likewise a provision for appraisal of the amount of loss or damage in case the assured and the insurer shall fail to agree thereon. Coverage is for 100% of the list price of each Chrysler car, F. O. B. Detroit, on date of purchase at retail, limited, however, as already indicated to the actual cash value at the time of [fol. 93] loss; coverage under the contract and under certificates to be issued is provided to be "automatically effective from the date on which (during the term of this policy) each purchaser takes delivery of a Chrysler car or receives a bill of sale of a Chrysler car, whichever shall be the earlier, and shall attend in respect to such Chrysler car for a period of twelve months." The purchaser is defined as one purchasing or agreeing to purchase Chrysler cars at retail. No car is insured which on July 1, 1925, was in the possession of or in transit to any dealer or distributor unless reported by Chrysler Sales Corporation to the insurer. The insurer is required to issue certificates to any purchaser at retail in the form attached to the policy and the insurance evidenced by the contract and certificate is not subject to cancellation by either party. If the automobiles are financed, that is, sold on deferred payments secured by lien upon the car, a duplicate of such certificate is furnished to the finance companies financing the purchase. It is agreed, however, that all cars shall be automatically covered as provided in the contract notwithstanding the failure or omission to apply for or issue a certificate or the failure to report to the insurer any car as re-

quired by the policy. In cases where the purchaser takes out other insurance upon his car and the Palmetto Fire Insurance Company disclaims liability on that account, coverage under the contract is provided to operate as excess insurance, not to apply to any loss until recovery from such other insurance shall have been exhausted. The Chrysler Company is obliged to send original detailed reports to Commercial Credit Corporation and a duplicate thereof to the insurer of Chrysler cars in the possession of or in transit to its distributors and/or dealers and unsold on July 1, 1925, upon which insurance is desired under the contract [fol. 94] tract. It is also required to send each month on or before the 15th day reports to the same parties of the cars shipped to its dealers and distributors throughout the United States during the preceding calendar month. The agreed premiums are to be paid by Chrysler Sales Corporation for the insurance provided for and are paid by the Chrysler Corporation to the Commercial Credit Corporation or any insurance broker designated by the latter on or before the 15th day of each month for all Chrysler cars reported by the distributors and dealers of the Chrysler Sales Corporation as sold and/or leased during the preceding month and which are insured, and a report of such cars in detail is required to accompany such remittance. Commercial Credit Corporation is required to remit or cause the insurance brokers designated by it to remit the insurance premiums on or before the 25th day of each month to the agents of the Palmetto Fire Insurance Company at Baltimore, Maryland. Commercial Credit Corporation guarantees the payment of such premiums. Payment of all losses claimed are to be made

"to purchaser unless the purchase of any Chrysler car has been financed, in which case payment of all losses shall be made to Commercial Credit, Affiliated Companies or other finance companies or dealers (meaning all who have advanced deferred payments on behalf of the purchaser and taken security therefor) financing the same for the account of all parties as their respective interests may appear."

The form of certificate attached to the contract recites in effect that pursuant to the contract between the Chrysler Sales Corporation and the Palmetto Fire Insurance Com-

pany, the new Chrysler car sold and delivered to the purchaser whose address is given and which car is specifically described, is insured against loss or damage from the perils insured against for a period of one year, with specific dates, for a sum stated, being the list price of the car including standard factory equipment, F. O. B. Detroit. The certificate [fol. 95] cate asserts that the interests of the Chrysler Sales Corporation and/or of purchasers, owners, dealers, persons, etc., or others having an insurable interest, are protected with the same force and effect as if they severally accepted the same. The loss, if any, is to be adjusted with the purchaser but to be paid subject to all conditions of this certificate only to the person named in the certificate who holds the lien or mortgage upon the car "for account of all interests". It is provided in the certificate that it shall not be valid until countersigned by the duly authorized agent at Detroit, Michigan.

It is averred by complainant that whether a Chrysler car is sold at retail for cash or on time, the price is the same except for the charge made for financing the deferred payments which have heretofore varied but which under the plan devised by complainant has become 8% upon the unpaid balance if the sale is on time. Nor may purchaser obtain his car at a less price whether or not he desires the protection of such insurance. The practice with respect to the sale of Chrysler cars is that the Chrysler Sales Corporation from time to time has fixed the list price of its cars and sells them to its distributors for a cash price computed as follows: List price, less a given discount, plus war tax and certain delivery charges. Freight is paid by the distributor. In computing the discount, there is not included the war tax or the delivery charge. On July 1, 1925, additions were made to the delivery charge on all models of Chrysler cars. The complaint, however, does not disclose whether this increase in the delivery charge corresponded in amount with the cost to the Chrysler Sales Corporation of the insurance premium which it would pay under the Palmetto contract or not but the inference is unmistakable that such was the fact. The distributor sells to the dealer on the same basis as the distributor has [fol. 96] bought but allows a smaller discount on the list price. The dealer in turn sells to the retail purchaser at a price equal to the list price, plus freight, war tax and

delivery charge. The retail dealer reports to the complainant the name of the purchaser, date of sale, motor number, style, etc., on retail sales made and also the name of the person or corporation financing the purchase if made on time. Complainant notifies the agent at Detroit, Michigan, of the insurance company and he mails the certificate from his office in Detroit to the purchaser and duplicates to others who to his knowledge may have an interest in the car.

Complainant alleges, while defendant denies, that the distributors of and dealers in Chrysler cars are in no way agents of the plaintiff and that no dealer or distributor takes any part in writing or placing or in the payment for insurance under the Michigan contract. Nor, says complainant, does the distributor or dealer solicit, demand, receive or transmit any premium. The contention of the complainant is that as to those cars shipped and to be sold at retail in Wisconsin, as is true throughout the United States, they become the property of the dealer, for which he has paid a stated price and which he sells in Wisconsin at a stated price as his own property and not as the agent for any one and that the insurance becomes effective not by virtue of anything the dealer does but by virtue of the contract of June 16 last entered into in Michigan and that the insurance which becomes effective in the hands of the retail purchaser in Wisconsin becomes effective solely by virtue of the Michigan contract and that the sale of the cars in Wisconsin by the dealers cannot be properly construed as effecting any insurance which it claims becomes automatically effective by virtue of the Michigan contract. Most of these contentions are asserted as facts in the bill and denied by the defendant and are of course to be resolved [fol. 97] by a true construction and interpretation of the contract and the course of business thereunder, with the legitimate inferences to be made therefrom.

One of the important details of this contract and plan is that the effective date of the insurance is postponed until a car is sold at retail and until title has passed from, not only complainant, but, its distributors and dealers, and only takes effect upon a sale at retail and covers only the loss sustained by the retail purchaser and lien claimants whose claims grow out of the transaction of retail sale. When so sold, complainant claims, the insurance becomes auto-



matically effective, by virtue of the Michigan contract. Plainly the theory of complainant is that this insurance is something that attaches to and follows an automobile upon its course through the market, as though a part or accessory and that the dealer who sells the car has nothing to do with the insurance item,—he merely sells the car with all its equipment including the insurance. But this idea is erroneous for, at least, two reasons: (1) The insurance never had effective existence until the sale at retail, by its very terms, or, as it may differently be stated, it is only to be made operative by an act of the retail dealer and (2) the legal concept of insurance is that in the absence of special circumstances it does not attach to property but to persons. As said by Story, J., in *Carpenter v. Providence Co.*, 16 Peters, 495, 503, quoting Lord Hardwick:

“The society are to make satisfaction in case of any loss by fire. To whom, or for what loss, are they to make satisfaction? Why! to the person injured, and for the loss he may have sustained, for it cannot properly be called insuring the thing, for there is no possibility of doing it, and therefore must mean insuring the person from damage.”

A similar thought underlies the decision in *Paul v. Vir- [fol. 98] ginia*, 8 Wall. 168, wherein Justice Field says, referring to insurance contracts:

“These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one state to another and then put up for sale.”

And this thought has withstood numerous assaults as is indicated in *N. Y. Life Ins. Co. v. Deer Lodge County*, 231 U. S. 495. And so we conclude that the insurance feature of the sales of Chrysler cars in Wisconsin may not be treated as an appendage or bit of equipment of small relative cost, which passes with the transfer of the car, but must be approached as a contract between persons, the insurer and the insured, and in so far as an insurance results it must be viewed as a thing apart and distinct from the cars sold.



What is the effect of the postponement of the operative effect of the contract? In considering this question it should be borne in mind that we are not concerned in this suit with the validity of the contract as such, but rather, with the question of whether or not the insurance eventually effected under it is so effected in Wisconsin as to give the regulatory statutes of that state, opportunity to operate thereon.

The course of business so far as a Wisconsin dealer is concerned is that he sells a car located in Wisconsin to a Wisconsin purchaser and offers as an incident to the sale, the insurance in question; the car including the insurance, is accepted,—the purchaser pays the dealer for the car, including the insurance premium, and this all occurs between Wisconsin residents with reference to property located in Wisconsin. By the sale the dealer thus fixes the term of the insurance which runs for one year from the date of retail sale; he normally reports the sale to complainant who in turn reports it to the insurer and accom-[fol. 99] panies the report with a remittance of the premium. If the retail purchase is upon deferred payments, the dealer and purchaser arrange for some one to finance it, and he becomes a beneficiary, selected ordinarily but not necessarily in Wisconsin and finally a certificate is mailed at Detroit to the Wisconsin insured. The dealer in Wisconsin, clearly does these things in Wisconsin: 1. He sells the car, including the insurance; 2. He collects the price, including the premium (that he does not remit it, is of small moment, having already advanced it, receiving nothing for it); 3. He fixes the term of the insurance; 4. He selects the beneficiaries—purchaser and financier; 5. He notifies complainant of these details by mail. All these things, except the last are essentials to the completion of the insurance contract and bring it into actual existence and occur in Wisconsin, between residents of that state, the dealer acting with authority under the Michigan contract. On the oral argument a certificate said to be typical of those delivered to purchasers, was handed to the court, which bore the endorsement, "any Chrysler dealer will notify purchaser to whom notice of any such loss should be given." We are now informed that such endorsement is eliminated from all certificates which are being sent out. The endorsement quoted above was slightly confirmatory,

but its elimination does not detract from the relationship of the dealers to the insurance as the whole plan discloses it.

Having these facts in mind and the thought that insurance is a matter of contract between persons, we are confronted immediately by the fact that the Michigan contract is not an insurance in praesenti, but rather a contract to insure in the future. It is not intended to indemnify Chrysler, nor its distributors, nor dealers, though the property successively passes through them in unqualified [fol. 100] ownership. Properly construed, we deem the contract one for future insurance to indemnify the retail purchasers and through them those who finance the retail purchasers, all to be provided by using the Chrysler organization of distributors and dealers to secure the adoption of the insurance by the retail purchasers and lien holders. How, then, can it be said that what the dealer does in Wisconsin are mere collateral acts, where they operate to bring the insurance into effect for the first time—give it life—and only by those acts are those essentials of insurance, identity of insured, identity of property, term of the risk and payment of premium, consummated? When, in addition, it is considered that in effect the Chrysler dealers act as solicitors of insurance as an incident to the sale of automobiles, we have no doubt that the insurance received by each retail purchaser in Wisconsin is in fact consummated in that state. The contention of counsel that the insurance is effective whether the retail purchaser wishes it or not, is erroneous, we think, and based on the theory that the insurance is the subject of barter and sale and passes as does the wind-shield wiper, as an accessory, from the dealer to the purchaser. The analogy is incomplete, for reasons already stated, and also because the dealer never has the insurance to pass, but rather it springs into existence upon its acceptance by the purchaser. That such acceptance is practically assured by the practice of demanding its cost regardless of whether the purchaser desires the insurance or not, does not alter the fact. In our opinion, the insurance on cars sold by Wisconsin dealers, in Wisconsin to Wisconsin purchasers, is consummated within that state.

Among other facts which tend to support this conclusion, it may be borne in mind that by the Michigan contract it is

provided that "insurer shall issue certificates to purchaser [fol. 101] substantially in the form attached," while the course of business is to mail such certificate to the retail purchaser. It is evident that it is deemed of some importance that the retail purchaser receive the certificate as his visible evidence of indemnity and the course of business adopted indicates that delivery of the same to him is made in Wisconsin through the postal service as the agent of the insurer. Again, while it is contended that the retail dealer does not sustain an agency relation to any one and sells the car as his own property, the whole plan confidently assumes that the dealer will sell the automobile at retail and collect the price designated as the list price together with the freight and delivery charges, and more to the point, it is assumed that the retail dealer will make report of the sale of the car at retail for the purpose of furnishing the basis not only for the issuance of a certificate to the purchaser, but also—and this is no doubt of some importance to the insurer—for the purpose of determining the premiums which Chrysler shall be required to pay to the insurer.

We have not overlooked the fact that all of these acts performed by the dealer in Wisconsin are to him no doubt mere incidents in the larger transaction of selling an automobile, even though he stresses, as he probably does, the insurance feature in his "sales talk" nevertheless this does not make the insurance feature any the less an item which the state may, and in common with most, if not all, has seen fit to regulate.

Nor do we believe that the fact that the Michigan contract is written in favor of "Chrysler Sales Corporation and/or for account of whom it may concern," alters the conclusion indicated. The fact that the contract in question postpones the existence of any insurance until after the transactions in Wisconsin above outlined, differentiates [fol. 102] the contract here from any in the cases called to our attention or which an independent search has revealed. Even in those cases where insurance in praesenti exists and a change of ownership occurs, the insurance is enforced on behalf of those intended by that phrase "provided the person who ordered it had the required authority from the former, or they subsequently adopted it." *Hooper v.*

Robinson, 98 U. S. 536; Hagen v. Scottish Ins. Co., 186 U. S. 423; Waring v. Indemnity Co., 45 N. Y. 606. While it is held that adoption may be shown informally and may occur even after loss, it is clear that in those cases operative insurance did not await the selection and assent of one of those intended by the phrase "whom it may concern," nor was the term of the effective insurance fixed by the transaction with him. We do not intend to imply that there are no other serious questions presented by the contract and facts here, but laying those questions aside, we think the above considerations are sufficient to repel the idea that the phrase "whom it may concern" materially affects the question before us.

Enough has already been said, we think, to indicate that our view of the case at bar clearly distinguishes it from the case of *Allgeyer vs. Louisiana*, 165 U. S. 578, in which no question of agency was involved and wherein it was held the contract was "made outside of the state, to be performed outside of the state, although the subject was property temporarily within the state." P. 592. In the instant case the contract, and the only contract which actually affords effective insurance, is made in Wisconsin, to be performed there (*Lumbermen's Ins. Co. vs. Meyer*, 197 U. S. 407, P. 416) and the subject is property located there. Nor is *Minnesota Association vs. Benn*, 261 U. S. 140, in point for there the members who solicited new members were without authority to obligate it. In *Aetna Life Insurance Co. vs. Dunker*, 266 U. S. 389, the Tennessee contract was in full force before the assured removed to Texas and what transpired thereafter was in fulfillment of the completely effective Tennessee contract. Nor are we dealing here with a case where a resident of Wisconsin has in another state entered into a contract with a foreign corporation, so that the laws of Wisconsin need be given extraterritorial force as was condemned in *N. Y. Life Ins. Co. vs. Head*, 234 U. S. 149. On the other hand our view is that notwithstanding it is quite different in its facts, the instant case comes squarely within the principles of *Hooper vs. California*, 155 U. S. 648, *Nutting vs. Mass.*, 183 U. S. 553, and *Penna. Lumbermen's Ins. Co. vs. Meyer*, 197 U. S. 407.

Our attention has been called to the decisions of the

United States District Court for the southern district of Ohio and the United States District Court for the southern district of New York, both yet unreported, and rendered in actions brought by the Palmetto Fire Insurance Company to enjoin the revocation of its licenses to do business in the states of Ohio and New York by the respective superintendents of those states. In the Ohio case it was held that the statute of that state prohibiting an insurance company legally authorized to transact business in Ohio from writing, placing or causing to be written or placed, insurance upon property situated or located in that state, except through a legally authorized agent therein, who should countersign all policies and enter the payment of the premium upon his record, was a valid law so far as insurance corporations who had taken out licenses were concerned and that such a license might properly be revoked if the statute was violated. The question there passed upon is quite clearly not involved in the instant case. In the New York case the defendant superintendent of insurance was enjoined from revoking the license of the Palmetto Fire Insurance Company upon the ground, as we read the decision, that the New York statutes do not prohibit the transactions involved and that the transactions being valid in Michigan, and not made invalid in New York, no legal cause for cancellation of the license existed. In that opinion it is said:

"The policy which is issued at Detroit, Michigan, under the plan insures the Chrysler Sales Corporation on cars sold together with others who may have an interest therein, including the ultimate purchaser in New York, who pays no premium but can take advantage of the insurance if he chooses to avail himself of it. No renewal of the policy is allowed. It amounts to a gift of insurance for one year if the ultimate purchaser of a Chrysler car sees fit to avail himself of it."

It is apparent from a comparison of the foregoing quotation with what we have said that the New York court has arrived at a very different interpretation and construction of the contract and the course of business under it, from ours. That opinion has caused us to reexamine the grounds of our own construction, but we find ourselves unable to subscribe to that part of the opinion which underlies the

conclusion that the insurance provided under the plan for the retail purchaser is a gift which arises out of a Michigan transactions. With all due deference we adhere to the interpretation of the contract and the course of business thereunder, hereinbefore outlined.

The business done and to be done in Wisconsin under the plan in question, in our opinion, constitutes the transacting of business within the state and the Palmetto Company is one of those validly required to take out and pay for a license under Sec. 201.41 (1) of the Wisconsin statutes, quoted above.

It is contended that the Chrysler dealers are not agents of the insurance company and are not within the terms of the penal statutes under which defendant threatens prosecutions. Granting that they are not agents in the conventional sense, and probably do not regard themselves as [fol. 105] such, nevertheless that question must be determined by what they do in fact, its effect, whom they do it for and by what authority, and by such test they clearly act within Wisconsin to effect insurance for purchasers upon automobiles, on behalf of the Palmetto Company with authority. Granting, further, that such statutes must be strictly construed, we have no hesitancy in concluding that the Chrysler dealers in Wisconsin operating under this plan bring themselves within both the letter and spirit of Sec. 209.04 Wis. Sts. The word "person" in the section is not to be treated as surplusage and must be held to include those who, though not officers, brokers, agents or sub-agents in the legal sense, in an analogous capacity, perform for the insurance company the forbidden acts of aiding "in any manner in transacting the business of or with such corporation (one required to pay a license) in placing risks or in collecting any premiums or assessments or effecting insurance therein."

Whether other Wisconsin statutes validly apply is not necessary to decide, for from what has already been said it follows that the application for a preliminary injunction must be denied.

It is so ordered.

Evan A. Evans, Circuit Judge. F. A. Geiger, District Judge. C. Z. Luse, District Judge.

[File endorsement omitted.]

[fol. 106] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—November 18, 1925

Hearing in the above entitled matter having been heretofore held before Hon. Evan A. Evans, Circuit Judge and Hon. F. A. Geiger and Hon. C. Z. Luse, District Judges, on plaintiff's petition for a preliminary Injunction:

In open Court, Hon. C. Z. Luse, District Judge presiding, it was ordered that the application for preliminary injunction must be denied.

Plaintiff duly excepts and exceptions allowed.

Filed Opinion.

I hereby certify the above to be a true copy of the original entry on the minutes of the court proceedings in the United States District Court for the Western District of Wisconsin, at Superior, on the 18th day of November, 1925.

Herbert C. Hale, Clerk, by C. W. Bishop, Deputy.

[fol. 107] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 108] Clerk's return omitted in printing.

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[fol. 109] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted]

ASSIGNMENTS OF ERROR—Filed December 3, 1925

Plaintiff in connection with petition for appeal herein, presents and files therewith its assignment of errors, as to which matters and things it says that the order entered herein on the 18th day of November, 1925 is erroneous, to-wit:

First. That the court erred in refusing interlocutory injunction as prayed.



Second. That the court erred in refusing to hold invalid as in violation of the 14th Amendment to the Constitution of the United States and the full faith and credit clause of said Constitution (Article IV, Sec. 1) and impairment of contract clause (Article I, Section 10) of said Constitution, Section 203.07 Wisconsin Statutes 1923 declaring that all fire insurance contracts on property in Wisconsin shall be held to be made and effected within Wisconsin and prohibiting the making of any such contracts on property in Wisconsin directly or indirectly by any unlicensed company.

Third. That the court erred in holding that distributors of and dealers in Chrysler automobiles in Wisconsin selling in Wisconsin automobiles the purchases of which are protected by insurance contract effected in Michigan between the Chrysler Sales Corporation and Palmetto Fire Insurance [fol. 110] Company as set out in complaint and doing acts incidental to such sales are violating the penal provisions of Wisconsin Statutes and particularly Section 209.04 Wisconsin Statutes 1923.

Fourth. That the court erred in holding that by virtue of the contract of insurance between Chrysler Sales Corporation and Palmetto Fire Insurance Company made in Michigan and the sale of Chrysler cars in Wisconsin by dealers in and distributors of Chrysler cars in Wisconsin and acts incidental thereto as set out in complaint, said Palmetto Fire Insurance Company is transacting an insurance business in Wisconsin and is subject to the tax provided for by Section 76.33 Wisconsin Statutes 1923 as amended by Chapter 372, Wisconsin Laws of 1925 and that said statute so imposing such tax is valid and not in violation of the Constitution of the United States.

Fifth. That the court erred in holding that dealers in and distributors of Chrysler cars in Wisconsin are agents of and for the Palmetto Fire Insurance Company in respect to business of that company transacted in the State of Wisconsin.

Sixth. That the court erred in refusing to hold that Section 457.5s Wisconsin Statutes 1923 as amended by Chapter 375 Wisconsin Laws 1925 prohibiting any officer, agent, solicitor or broker or other employe of any unauthorized insurer from taking or receiving an application for insur-



ance in Wisconsin or receiving or collecting premiums does not apply to or prohibit any of the acts of dealers in or distributors of Chrysler cars described in complaint.

Seventh. That the court erred in refusing to hold that Section 209.04 Wisconsin Statutes 1923 has no application to dealers in and distributors of Chrysler automobiles in [fol. 111] Wisconsin.

Eighth. That the court erred in refusing to hold that Section 201.44 Wisconsin Statutes 1923 providing that no policy of insurance shall be issued or delivered in Wisconsin except through a licensed resident agent does not apply to acts of dealers in and distributors of Chrysler cars in Wisconsin.

Ninth. That the court erred in holding that by virtue of the acts and transactions of dealers in and distributors of Chrysler cars in Wisconsin described in complaint and contract made in Michigan between Chrysler Sales Corporation and Palmetto Fire Insurance Company and the operation of said contract said Palmetto Fire Insurance Company is unlawfully transacting an insurance business in Wisconsin in violation of Section 201.41 Wisconsin Statutes 1923.

Tenth. That the court erred in refusing to hold that the dealers in and distributors of Chrysler cars in Wisconsin are not violating any law of Wisconsin and that there is no Wisconsin law sanctioning or supporting the prosecutions and actions against such dealers and distributors threatened by defendant.

Eleventh. That the court erred in holding that the threatened acts of defendant W. Stanley Smith are supported and sanctioned by law and in refusing to hold that said threatened acts and proceedings are not supported by law but are contrary to law and beyond the power of defendant and threaten to cause irreparable injury and damage to plaintiff.

Twelfth. That the court erred in holding that Section 209.04 Wisconsin Statutes 1923 construed as prohibiting the acts of Chrysler dealers and distributors as set out in the complaint is a valid law and does not violate any provision of the Constitution of the United States.

Thirteenth. That the court erred in holding that by virtue of the facts set out in complaint the Palmetto Fire [fol. 112] Insurance Company is subject to tax by the State of Wisconsin in respect to premiums in the contract of insurance involved in this action and that liability to such tax exists and that the Wisconsin Statute imposing such tax is not in violation of the Constitution of the United States.

Fourteenth. That the court erred in refusing to hold that the statutes of the State of Wisconsin in so far as they may be construed as prohibiting or penalizing the acts of dealers in and distributors of Chrysler cars in Wisconsin are invalid as in violation of the Constitution of the United States in that such statutes so construed take the property of said dealers and distributors without due process of law and take the property of the plaintiff herein without due process of law and deny to said dealers, distributors and to plaintiff the equal protection of the law and prohibit the sale of plaintiff's product by independent dealers in Wisconsin by virtue of the fact that plaintiff has effected in Michigan a contract of insurance protecting and benefitting all retail purchasers of plaintiff's product thus attempting to penalize the making of a contract of insurance outside the State of Wisconsin and to lay a burden thereon and because said statutes so construed destroy and take away without due process the liberty of contract of said dealers and distributors being the customers of plaintiff in Wisconsin to the prejudice and destruction of plaintiff's business and because said statutes so construed violate the 14th Amendment to the Constitution of the United States, and also Article IV, Section 1 and Article I, Section 10 of said Constitution of the United States.

Fifteenth. That the court erred in refusing to hold that the threatened acts of the defendant would deprive plaintiff of its property without due process of law and deny plaintiff the equal protection of the law in violation of the [fol. 113] 14th Amendment to the Constitution of the United States.

Sixteenth. That the court erred in refusing to hold that in so far as Wisconsin Statutes are construed as prohibiting the acts of Chrysler distributors and dealers in Wisconsin, they impose a burden and prohibition on interstate commerce contrary to the Constitution of the United States.

Wherefore plaintiff prays that the order and decree may be reversed and that plaintiff may have an adjudication and decree in its favor.

Ralph W. Jackman, Harold M. Wilkie, Oscar T. Toe-  
baas, Attorneys for Plaintiff.

[fol. 113½] Service of due notice of written assignment of errors admitted December 14, 1925.

Herman L. Ekern, T. L. McIntosh, Attorneys for  
Defendant.

[fols. 114 & 114½] Citation in usual form showing service on Herman L. Ekern et al., filed Dec. 15, 1925, omitted in printing.

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[fol. 115] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND STIPULATION  
AS TO PARTS OF RECORD TO BE PRINTED—Filed February  
2, 1926

It is hereby stipulated that the transmitting of the record in this action was delayed because of necessity for counsel on both sides to go over transcript and agree on corrections which have been made. Stipulated further that this case may be docketed at once if not already docketed.

Appellant states that in pursuance of rule ten of the United States Supreme Court it expects to rely on each and all of the assignments of error which are attached to the record filed in this case.

It is stipulated that the following parts of the record need not be printed and that same are not necessary for a consideration of the assignments of error or any of them:

(1) Omit Bond on Appeal, pp. 4 and 5, of Record, and insert:

“Here appears sufficient bond on appeal approved by district Judge.”

(2) Omit Injunction bond on appeal, and Order Approving Same, pp. 11-13 of record, and insert:

"Here appears injunction bond on appeal conforming to injunctional order pending appeal and approval of same by district judge."

[fol. 116] (3) Omit Precipe for the transcript on said appeal, pp. 14-16, of record, and insert in lieu thereof the following:

"Here appears Precipe for Transcript on said Appeal, and admission of due service thereof."

(4) Omit subpoena issued upon Bill of Complaint, and return thereof, pp. 77-79 of record, and insert in lieu thereof the following:

"Here appears subpoena duly issued upon the bill of complaint and the return thereof."

(5) Omit Bond on Restraining Order, p. 83 of Record, and insert in lieu thereof the following:

"Here appears Bond filed upon issuing of preliminary restraining order and approved by District Judge."

(6) Omit Notice to Defendant and to the Governor of the State of Wisconsin and the Attorney General of the State of Wisconsin of Application for interlocutory injunction and admissions of service of said notice at pp. 85-87 of Record, and insert in lieu thereof the following:

"Here appears Notice of Plaintiff herein to the defendant and likewise to the Governor of the State of Wisconsin and the Attorney General of the State of Wisconsin duly notifying him and them of the application of the plaintiff for an interlocutory or preliminary injunction, and also complete admissions of service of said notice which was duly given pursuant to section 266 Judicial Code."

It is further stipulated and agreed that if from oversight or omission any necessary part of the record be not thus printed that the appellant has the right to print, or may be required by the defendant in error to print, any further or additional portions thereof.

It is hereby stipulated and agreed that both appellant and appellee waive any right to further reduce or diminish

[fols. 117 117½] the printed record and request that the record be at once printed.

Dated January 29th, 1926.

Ralph W. Jackman, H. M. Wilkie, O. T. Toebaas,  
Counsel for Plaintiff and Appellant. Herman L.  
Ekern, Attorney General, Counsel for Defendant  
and Appellee.

[fol. 118] [File endorsement omitted.]

Endorsed on cover: File No. 31,661. Western Wisconsin  
D. C. U. S. Term No. 938. Chrysler Sales Corporation,  
appellant, vs. W. Stanley Smith, as Commissioner of In-  
surance for the State of Wisconsin. Filed February 1st,  
1926. File No. 31,661.

**APPELLANTS**

**BRIEF**

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1926

U. S. Supreme Court, U. S.  
FILED  
SEP 15 1926  
BOSTON  
CLERK

CASE No. 273.

**CHRYSLER SALES CORPORATION,**

*Plaintiff-Appellant,*

**WILBUR D. SPENCER,** as Commissioner of Insurance of the  
State of Maine,

*Defendant-Appellee.*

CASE No. 274.

**UTTERBACK GLEASON COMPANY,**

*Plaintiff-Appellant,*

**WILBUR D. SPENCER,** as Commissioner of Insurance of the  
State of Maine,

*Defendant-Appellee.*

CASE No. 286.

**CLARK MOTOR COMPANY,**

*Plaintiff-Appellant,*

**W. STANLEY SMITH,** as Commissioner of Insurance of the  
State of Wisconsin,

*Defendant-Appellee.*

CASE No. 287.

**CHRYSLER SALES CORPORATION,**

*Plaintiff-Appellant,*

**W. STANLEY SMITH,** as Commissioner of Insurance of the  
State of Wisconsin,

*Defendant-Appellee.*

ON DIRECT APPEAL FROM THE STATUTORY COURTS—UNITED  
STATES DISTRICT COURT, WESTERN DISTRICT OF WISCONSIN  
AND UNITED STATES DISTRICT COURT, DISTRICT OF MAINE,  
SOUTHERN DIVISION.

**BRIEF FOR APPELLANTS**

*(Plaintiffs Below).*

**DUANE R. DILLS,**

*Counsel for Plaintiffs-Appellants.*





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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1926

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CASE No. 273.

CHRYSLER SALES CORPORATION,  
Plaintiff-Appellant,

v.

WILBUR D. SPENCER, as Commissioner of Insurance of the  
State of Maine,  
Defendant-Appellee.

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CASE No. 274.

UTTERBACK-GLEASON COMPANY,  
Plaintiff-Appellant,

v.

WILBUR D. SPENCER, as Commissioner of Insurance of the  
State of Maine,  
Defendant-Appellee.

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CASE No. 286.

CLARK MOTOR COMPANY,  
Plaintiff-Appellant,

v.

W. STANLEY SMITH, as Commissioner of Insurance of the  
State of Wisconsin,  
Defendant-Appellee.

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CASE No. 287.

CHRYSLER SALES CORPORATION,  
Plaintiff-Appellant,

v.

W. STANLEY SMITH, as Commissioner of Insurance of the  
State of Wisconsin,  
Defendant-Appellee.

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On Direct Appeal from the Statutory Courts—  
United States District Court, Western District of Wisconsin  
and United States District Court, District of Maine,  
Southern Division.

**BRIEF FOR APPELLANTS.**  
**(Plaintiffs Below).**

### **Opinions Below.**

Decision of the U. S. District Court for the Western District of Wisconsin (Case No. 286, R. 66; Case No. 287, R. 68) is reported in 9 Fed. (2d) 666.

The opinion of the U. S. District Court for the District of Maine, Southern Division (Case No. 273, R. 35; Case No. 274, R. 36) is reported in 9 Fed. (2) 674.

### **Jurisdiction.**

Jurisdiction is claimed under Section 266 Judicial Code of the United States, as amended February 13, 1925.

The judgment of the United States District Court for the Western District of Wisconsin was rendered on November 18, 1925 (Case No. 286, R. 82; Case No. 287, R. 84); and the judgment of the court for the District of Maine, Southern Division, was rendered on January 4, 1926 (Case No. 273, R. 34; Case No. 274, R. 35).

The controverted issue is whether insurance coverage under a blanket policy on Chrysler automobiles constitutes a Michigan contract beyond the jurisdiction of the states, or Wisconsin and Maine contracts subjecting Chrysler dealers to the insurance regulatory statutes of the states.

All of the cases come before this court on direct appeal from the judgments of the statutory court of three judges provided for in Section 266 of the Judicial Code as amended by the Act of February 13, 1925 (Western District of Wisconsin and Southern Division of Maine). The courts denied after notice and hearing an interlocutory injunction to restrain the defendants-appellees (the Commis-



sioners of Insurance of the State of Wisconsin and the State of Maine respectively) from sending out threatening letters and communications accusing the plaintiffs-appellants and dealers in Chrysler automobiles in Wisconsin and Maine of violating the insurance laws of the States of Wisconsin and Maine respectively and announcing publicly that insurance on Chrysler cars was void; and from bringing or causing to be brought criminal prosecutions against the dealers in Chrysler automobiles in Wisconsin and Maine respectively, and civil actions for penalties, and from otherwise interfering with the sale of Chrysler cars in Wisconsin and Maine under the color of their offices as Commissioners of Insurance of Wisconsin and Maine respectively.

The bills of complaint filed by the plaintiffs-appellants in the actions in the Western District of Wisconsin and the Southern Division of Maine were substantially the same. The defendant-appellee, Commissioner of Insurance of Wisconsin, filed an answer to the bill of complaint in that action (Case No. 286, R. 54; Case No. 287, R. 58). No answer was filed to the bill of complaint in the action in the Southern Division of Maine.

Equitable relief was sought to prevent immediate and irreparable damage to plaintiffs-appellants in violation of the Fourteenth Amendment, Article I, Section 10, and Article IV, Section I of the Federal Constitution.

There is substantial agreement as to the material facts, but there is a sharp difference of opinion as to the inferences drawn from those facts. The decision of the court for the Southern District of New York (*Palmetto Fire Ins. Co. v. Beha*, not yet reported, but cited by this Court in *Fidelity & Deposit Co. v. Tafoya*, decided March 15, 1926 not officially reported but appears in 46 Sup. Ct. Reporter

331) and on rehearing (decision not yet reported, but for the convenience of the court it is printed in full in the appendix to this brief) conflicts with the decisions of the courts of the Western District of Wisconsin and Southern Division of Maine.

Pursuant to the order of the court for the Western District of Wisconsin allowing this appeal and continuing the restraining order against the Insurance Commissioner of Wisconsin (Case No. 287, R. 2-5), the plaintiffs-appellants filed a bond for \$15,000 for the purposes mentioned in the order (Case No. 287, R. 6), and the Palmetto Fire Insurance Company appointed a temporary attorney to receive service of process.

This court has jurisdiction to restrain the State Commissioners of Insurance from proceeding against the plaintiffs-appellants under unconstitutional state statutes, and also has power to restrain the Commissioners if they are transcending the bounds of valid state statutes and unlawfully assuming to exercise the power of Government against the plaintiffs-appellants, contrary to their constitutional rights. The jurisdiction of the court extends to the determining of the questions involved in the case, including those of state law, irrespective of what disposition may be made of the Federal question or whether it be found necessary to decide it at all.

*Philadelphia Co. v. Stimson*, Secretary of War,  
223 U. S. 605.

*State of Colorado v. Toll*, 268 U. S. 228.

*Reagan et al. v. Farmers Loan & Trust Co.*, 154  
U. S. 362.

*Louisville & Nashville R. R. v. Garrett*, 231 U. S.  
298.

*Ex parte Young*, 209 U. S. 123.

*Work v. State of Louisiana*, 269 U. S. 250.

*Sioux City Bridge Co. v. Dakota County*, 260 U. S. 441.

### Questions Involved.

While the methods of marketing and financing the sale of automobiles may be somewhat involved, nevertheless the questions presented by these cases may be simply stated as follows:

1. Is a Chrysler dealer an insurance agent within the meaning of the Wisconsin and Maine statutes, when he sells his own property—the automobile—because his vendor in a foreign state made a contract of insurance in respect to that property for the benefit of “whom it may concern”, in which contract he, the dealer, did not participate, under which he does not act, and concerning which he has no voice or control? If so, do the statutes conflict with the Federal Constitution?

2. Have the States of Wisconsin and Maine by legislation attempted to extend their power beyond the state jurisdiction into Michigan, so as to inflict a perpetual contractual paralysis upon the Chrysler Sales Corporation from entering into insurance contracts “for account of whom it may concern” in respect to automobiles it sells in interstate commerce to residents of Wisconsin and Maine? If so, do those statutes violate the Federal Constitution?

3. When the purchasers of Chrysler automobiles in Wisconsin and Maine accept the benefits of an insurance contract made in Michigan between non-residents, does that constitute the making of new contracts in Wisconsin and Maine subject to regulation by those states?

### **Statement.**

The Chrysler Sales Corporation (hereinafter in this brief referred to as "Chrysler") and the Palmetto Fire Insurance Company made a contract of insurance at Detroit, Michigan, insuring "whom it may concern" against the hazards of fire and theft to Chrysler automobiles for one year from the date of their retail sale by automobile dealers throughout the United States. Both were corporations of foreign states and were not licensed to do business in Wisconsin and Maine. This litigation arose out of the operation of that contract. The Chrysler Sales Corporation is a subsidiary or affiliated company through which the manufacturer of Chrysler cars markets all of its product.

An explanation of the purposes and nature of the insurance finance plan inaugurated by the Chrysler Sales Corporation as well as a recital of the facts will assist this court in determining the issues.

More than eighty per cent (80%) of the automobiles of all makes sold at retail in the United States are sold under deferred payment or instalment plans, whereby a lien or title is retained on the car as security for part of the purchase price. The automobile dealers usually arrange with a finance company or a bank to purchase from or discount for them the notes, lien or title security instruments given by the purchasers of the automobiles. The discount or financing charges are added to the retail price of the car, so that when the instalment paper is sold by the dealer he receives sufficient, together with the cash down payment made by the purchaser, to equal the cash retail price of the

automobile. The banks and finance companies have insisted upon insurance on the automobiles and have controlled the same, adding the cost thereof to their finance or discount charges. This led to abuses in the way of fictitious and extremely high financing charges for insurance, banking accommodations, drawing of legal documents, etc.

Chrysler, being engaged in a highly competitive business, endeavored to correct these abuses, thereby increasing the sale of its product throughout the United States by securing a uniform finance charge throughout the United States which it could generally advertise, and thereby the purchasers of its product could easily determine the ultimate cost of Chrysler automobiles purchased by them on the instalment plan.

To this end Chrysler made an arrangement with the Commercial Credit Company of Baltimore, Maryland, for a low uniform finance rate throughout the United States, available to all dealers in Chrysler cars at their option. This rate was to be advertised so that prospective purchasers might be fully informed and not be deceived into paying higher rates. The Commercial Credit Company, however, required insurance against the hazards of fire and theft on all such cars to be financed, and in order to give the low rate required, this insurance had to be uniform and comprehensive enough to fully protect its interests, so as to avoid the necessity of examining and checking up miscellaneous policies of different insurance companies in the several states on each financed sale.

Chrysler found it could obtain this insurance automatically effective for the benefit of "whom it may concern" at an extremely favorable rate provided all of its product throughout the United States was covered. The retail

purchasers of Chrysler cars would thereby get the advantage and benefit of Chrysler's mass purchasing power. The insurance company was enabled to give a favorable rate by reason of the spread of business and the elimination of acquisition cost—i. e., the commission of state agents, underwriting agents and brokers—which ordinarily runs from 25% to 40% in different jurisdictions on the gross amount of premiums collected.

The advantages of such automatic insurance were immediately apparent. Neither the purchasers nor the dealers nor the finance companies would have to apply for or obtain insurance. All purchasers would be instantly protected from the time of a retail sale. Coverage would not be dependent upon proper instruments and forms being written. Finance companies and bankers would be relieved of the necessity of watching and examining specific policies. It was estimated that the saving to retail purchasers of Chrysler cars throughout the United States by reason of the low finance rate would amount to \$5,000,000. per annum. The Chrysler sales plan would therefore be a great convenience and economic saving to automobile purchasers.

The insurance contract is in the usual form of an automobile insurance policy with a rider attached which in effect creates a running or open blanket policy. It was entered into on June 16, 1925 (Case No. 286, R. 12-32; Case No. 287, R. 16-36) at Detroit, Michigan, by and between Chrysler, a Delaware corporation which had its principal place of business at Detroit, and the Palmetto Fire Insurance Company, a South Carolina corporation which has a general agency at Detroit; and on August 4, 1925, at Detroit, Michigan, the same parties entered into a new contract (Case No. 273, R. 11-31; Case No. 274, R. 11-32; Case

No. 286, R. 34-53; Case No. 287, R. 38-57) modifying and clarifying to some extent the policy of June 16th, but not substantially changing the nature of the insurance.

The policy was issued to Chrysler "for account of whom it may concern, as hereinafter specified", giving insurance coverage against the hazards of fire and theft on all Chrysler automobiles sold at retail during the contract year. The insurance in each case was for one year from the date of the sale of a Chrysler car. When Chrysler learned from its dealers in the usual routine of its business of the retail sale of Chrysler cars, it advised the insurance company. Thereupon the insurance company prepared a certificate, had it countersigned at Detroit, Michigan, and mailed from Detroit, Michigan to the retail purchaser, banks, finance companies, dealers and all other parties having an interest or title in the car. The certificate certified that the blanket policy delivered to the Chrysler Sales Corporation at Detroit "for account of whom it may concern", covered the automobile purchased by the retail purchaser against the hazards of fire and theft, and it gave a summary of some of the conditions of the blanket policy.

The automobiles were automatically insured from the date of their retail purchase whether or not a certificate was issued, the policy of June 16th providing:

"It is expressly agreed that all Chrysler cars shall be automatically covered as provided herein, notwithstanding the failure or omission to apply for a certificate, or the failure or omission to issue a certificate, or the failure or omission to report any Chrysler car as required herein",

(Case No. 286, R. 21; Case No. 287, R. 24-25)

and the policy of August 4th provided:

“It is specifically agreed that every Chrysler car sold at retail during the term of this policy shall be automatically covered hereunder notwithstanding any failure or omission to issue a certificate or any failure or omission to report the sale of such car as required herein.”

(Case No. 273, R. 19; Case No. 274, R. 20; Case No. 186, R. 42; Case No. 287, R. 46.)

(Through typographical error part of the quotation is omitted in Case 273, R. 19.)

The premiums for the insurance were paid or to be paid by Chrysler to the insurance company at Detroit, Michigan. The dealers or retail purchasers did not pay or remit nor were they required to pay to the insurance company or anyone acting for the insurance company any premium for the insurance. Chrysler quite naturally did include the cost of insurance in the wholesale price of its product, the same as it included in the sale price its cost of workmen's compensation insurance or other overhead expenses.

The retail purchaser was not required to accept the insurance, but in the event that he provided his own insurance, then the coverage under the blanket policy was to be excess insurance. Whether or not the purchaser accepted the insurance, Chrysler nevertheless had to pay the premium. No rebate, refund or allowance of any nature was made by Chrysler to the dealers or the retail purchasers on the purchase price of an automobile, when the retail purchaser procured his own insurance and did not accept the benefit of the coverage under the blanket policy. The dealers paid a cash purchase price f. o. b. Detroit, Michi-



gan as they purchased cars at wholesale. They paid the same price even though they might not wish the automobiles purchased by them to be covered under the blanket policy. The cars became the property of the dealers to do with as they wished.

The distributors and dealers are not agents of Chrysler. They are customers. They have no authority to act for or obligate Chrysler. They are merchants in their own right. Whatever money the dealer received from the sale of an automobile was his own, for which he did not have to account, and no part of which had to be remitted to Chrysler or the insurance company. The money received by Chrysler from the sale of automobiles at wholesale in interstate commerce was its own money, to do with as it pleased.

Chrysler did not collect any insurance premiums from dealers and the dealers did not collect any premiums from retail purchasers. Both collected the purchase price of the cars sold by them. In the automobile business there are distributors and dealers. A distributor sells at both wholesale and retail, while a dealer sells at retail. A larger discount is allowed to distributors than to dealers. Cars are sold at wholesale at a list price less a discount plus war tax, freight and delivery charges, and are sold at retail at a flat net price equal to the list price, war tax, freight and delivery charges. The discount allowed at wholesale represents the dealer's profit at retail.

The Insurance Commissioners of the States of Wisconsin and Maine regarded the dealers selling automobiles insured under said blanket policy as insurance agents, or assuming to act as insurance agents within the meaning of the respective state statutes. The Commissioners were

about to notify the public that the insurance so provided was void and illegal, and that the dealers were violating the law; and they threatened to bring criminal proceedings and civil actions for penalties against dealers. As this would cause immediate and irreparable damage to the plaintiffs appellants, they accordingly filed their bills of complaint before the United States District Courts for the respective districts of Wisconsin, Western District, and Maine, Southern Division, and obtained temporary restraining orders against the Commissioners, pending the determination of a motion for an interlocutory injunction. After hearings held in accordance with Section 266 of the Judicial Code of the United States, the statutory courts therein provided for in both the Western District of Wisconsin and the Southern Division of Maine denied to the plaintiffs-appellants interlocutory injunctions prayed for, and upheld the contention of the Insurance Commissioners that the dealers by selling Chrysler cars were acting or assuming to act as insurance agents without license from the states, because the purchase from the dealer at retail of such cars insured under the blanket policy constituted the making of insurance contracts and the doing of business within the states of Wisconsin and Maine by the Palmetto Fire Insurance Company, a foreign unlicensed company; that the Insurance Commissioners were warranted by valid state laws in doing or threatening to do the things complained of by the plaintiffs-appellants. From these judgments of the statutory courts the plaintiffs-appellants appealed direct to this court.

### **Assigned Errors To Be Urged.**

Case No. 286, R. 83; Case No. 287, R. 84; Case No. 273, R. 48; Case No. 274, R. 49.

1. The courts erred in holding that the dealers in Chrysler cars violated the penal statutes of Wisconsin and Maine when they sold at retail Chrysler automobiles covered by insurance under a contract made at Detroit, Michigan, by the Chrysler Sales Corporation and the Palmetto Fire Insurance Company, both unlicensed in Wisconsin and Maine.

2. The courts erred in holding that the dealers in Chrysler cars are agents of the Palmetto Fire Insurance Company in the States of Wisconsin and Maine, in connection with insurance in respect to the Chrysler cars sold at retail by such dealers in Wisconsin and Maine.

3. The courts erred in holding that by virtue of the insurance contract made at Detroit, Michigan, and acts incidental thereto, the Palmetto Fire Insurance Company was transacting insurance business in Wisconsin and Maine respectively; and that such business was unlawful.

4. The courts erred in holding that the Palmetto Fire Insurance Company was subject to the tax statutes of Wisconsin and Maine in respect to premiums of insurance paid at Detroit, Michigan, by the Chrysler Sales Corporation for insurance coverage on Chrysler cars sold at retail by dealers in Wisconsin and Maine, and that such tax statutes were not in violation of the Constitution of the United States.

5. The courts erred in holding that the acts and threatened acts of the Insurance Commissioners complained of, were supported and sanctioned by law.

6. The courts erred in refusing to hold the various insurance statutes of Wisconsin and Maine had no application to dealers selling Chrysler automobiles at retail as set forth in the complaints.

7. The courts erred in refusing to hold that the statutes of Wisconsin and Maine, insofar as they may be construed as prohibiting or penalizing the acts of the dealers in selling Chrysler cars in Wisconsin and Maine, were in violation of the Constitution of the United States in that——

- (a) They take property of plaintiffs-appellants without due process of law.
- (b) Deny equal protection of the law.
- (c) Penalize and lay a burden upon a contract made without the States.
- (d) Destroy liberty of contract without due process of law.
- (e) Violate the Fourteenth Amendment to the Constitution of the United States; violate Article I, Section 10, and Article IV, Section 1, of the Constitution of the United States.

8. The courts erred in refusing to hold that insofar as the statutes of Wisconsin and Maine prohibit the sale of Chrysler cars covered by an insurance policy made and delivered and to be performed in Michigan, those state statutes impose a burden and prohibition on interstate commerce contrary to the Constitution of the United States.

9. The court for the Western District of Wisconsin erred in refusing to hold invalid and unconstitutional Section 203.07 of the Wisconsin Statutes 1923 which provides that all fire insurance contracts with respect to property in Wisconsin were to be construed as Wisconsin contracts.

### **Summary of Argument.**

1. Chrysler dealers in Wisconsin and Maine are independent automobile merchants and not insurance agents. They sell cars at retail which they had previously bought and paid for at wholesale. Their vendor, Chrysler Sales Corporation, at Detroit, Michigan, made a contract of insurance in that State with the Palmetto Fire Insurance Company by virtue of which Chrysler cars were automatically insured for the benefit of "whom it may concern" from the date of their retail sale. The dealers had no voice in the making and no control over the operation of the Michigan policy. The decision of the Statutory Court for the Southern District of New York (Palmetto Fire Insurance Company *v.* Beha on rehearing not yet reported) correctly states the law in respect to the Michigan blanket policy and dealers acts in the sale of the cars, and the Federal Court for the Western District of Wisconsin (cases 286 and 287), 9 Fed. (2) 666, and Southern Division of Maine (cases 273 and 274), 9 Fed. (2) 674, made unjustified inferences from the facts and erroneous conclusions of law, as is shown by an analysis of the opinions of said Courts. See pages 19-26.

2. The Wisconsin and Maine insurance statutes by their terms are not applicable to the acts of the dealers in selling

Chrysler cars and do not sanction or support the threatened acts of the Commissioners of Insurance of Wisconsin and Maine. The dealers do not effect insurance, do not collect premiums nor forward applications for insurance; they receive no remuneration for effecting insurance and make no fraudulent representations in respect to insurance; the dealers receive only their usual profit for the sale of their own property. The fact that Chrysler in a foreign state had included the cost of insurance as an overhead expense in the wholesale price of the cars to the dealer does not constitute the paying of a premium by the dealer in the purchase at wholesale of the cars, nor the collecting of a premium by the dealer from the retail purchaser when the dealer sells the car at retail for sufficient to reimburse him for his wholesale price plus his usual profit. The dealers are independent merchants and the proceeds of the sale of an automobile is their own property to do with as they please. What they do they do on their own account and in their own business. See pages 26, 34.

3. The dealers are not agents of the insurance company; they have no communication with it and have no authority to act for it. In other jurisdictions they have not been regarded as insurance agents, nor do they come within the definition of insurance agents as decided in the cases of the several jurisdictions. See pages 38-42.

4. Insurance on Chrysler cars is by virtue of a Michigan contract and not Wisconsin or Maine contracts. The Michigan policy is a completed contract notwithstanding the postponement of its operative effect until the retail sale of a Chrysler car. The operative effects of "for whom it

may concern" policies usually are postponed both as to the identification of the property covered and of the person or persons insured. See *Hagan et al. v. Scottish Union Ins. Co.*, 186 U. S. 423; *Hooper v. Robinson*, 98 U. S. 528, and other cases cited in this brief. The acceptance of the benefits of the Michigan policy by the retail purchasers and other beneficiaries does not constitute the making of several new contracts. Their rights are those of a third party to a contract made for their benefit. See pages 42-55.

5. The retail sale of Chrysler cars covered by the policy issued by the insurance company in Michigan does not subject that insurance company to liability for taxes in Wisconsin and Maine. See *St. Louis Cotton Compress Co. v. Arkansas*, 260 U. S. 346 and other cases; nor do the dealers become agents of the Insurance Company for the purpose of service of process. See *Minnesota Commercial Men's Association v. Benn*, 261 U. S. 140 and other cases. See page 55.

6. If the Wisconsin and Maine statutes should be so construed as to penalize the acts done by the Chrysler dealers in these cases, they would be unconstitutional to that extent. These cases come within the principles laid down by this Court in *Allgeyer v. Louisiana*, 165 U. S. 578; *Minnesota Commercial Men's Association v. Benn*, 261 U. S. 140; *Aetna Life Ins. Co. v. Dunken*, 266 U. S. 389, and other cases cited in this brief, and are to be distinguished from *Hooper v. California*, 155 U. S. 648; *Nutting v. Massachusetts*, 183 U. S. 553, in that the dealers do no overt act of insurance within the states of Wisconsin and Maine other than to conduct their legitimate business of selling Chrysler

cars. The statutes of Wisconsin and Maine can be given no extra-territorial effect and the Commissioners of those states have no jurisdiction over the blanket policy of insurance issued and to be performed in Michigan. See pages 56-61.

7. The states and the officers of the states cannot use their powers to accomplish a forbidden result and the attempt of the Insurance Commissioners to prevent the sale of a Chrysler car in their respective states because Chrysler in a foreign state included as an overhead expense the cost of insurance in the wholesale price of the car amounts to a placing of a burden on interstate commerce. While insurance is not in itself a commodity the subject of interstate commerce, nevertheless an attempt to regulate it when effected in a foreign state because its cost entered into the price of the commodity is an interference with the sale of the commodity itself in interstate commerce. See *Thames & Mersey Ins. Co. v. U. S.*, 237 U. S. 19; *Shafer v. Farmers Grain Co.*, 268 U. S. 189; *Alpha Portland Cement Co. v. Massachusetts*, 268 U. S. 203. The Commissioners of Insurance have no constitutional right to arbitrarily interfere with the legitimate business of a Chrysler dealer in the sale of his car. See pages 61-63.



## ARGUMENT.

### I.

**The Wisconsin and Maine statutes are inapplicable to the acts of dealers and distributors of Chrysler cars involved in these cases and do not sanction or support the threatened acts of the defendants-appellees—Commissioners of Insurance of Wisconsin and of Maine.**

The same contract involved in these cases and the same set of facts were considered by the statutory court under Section 266 of the Judicial Code for the Southern District of New York in the action of Palmetto Fire Insurance Company, which is the insurer in these cases, against James A. Beha, Superintendent of Insurance of New York (not yet reported but cited by this court in *Fidelity & Deposit Co. v. Tafoya*, *supra*). There is a direct conflict between the decision of the court for the Southern District of New York and the Western District of Wisconsin and Southern Division of Maine. The statutes of New York are quite similar to the Maine and Wisconsin statutes. The courts for the Western District of Wisconsin and the Southern Division of Maine disapproved of the conclusions of the court for the Southern District of New York. (9 Fed. (2d) 666, 673; 674, 678.)

On the strength of the decisions of the United States courts for Wisconsin and Maine, a rehearing was granted by the court for the Southern District of New York, and that court in adhering to its original decision, said (*Palmetto Fire Ins. Co. v. Beha* (rehearing decided July 14, 1926, not yet reported, but printed in full in the appendix, page 77, of this brief):

“The question is whether the dealer by explaining the transaction to the purchaser, forwarding his name with the amount paid for the car, in which the insurance premium had been taken into account in the charge, was effecting or procuring insurance in this state (New York) within the meaning of the statute. \* \* \* It is going further, however, to say that the retailer is the agent of a company which neither directs or pays him, nor has anything to do with him. The question is one of the construction of the New York Statute, than of constitutional law, and we hold that the fact of acquisition by the purchaser of Chrysler cars under a contract of sale, which *ipso facto* gives them insurance protection under an agreement made in Michigan between the Chrysler Company and the plaintiff, does not involve the effecting or procuring of insurance within the State of New York.”

(The statement that the dealer forwards the amount paid for the car is erroneous. He keeps it as proceeds of his own property.)

A study of the decisions of these courts in respect to the same contract will show that the conflict is due entirely to an interpretation and an understanding of the facts and the inferences placed by the courts on those facts.

The complaints in all of these cases, and the contract of insurance involved in these cases, show unmistakably that the blanket policy of insurance was made at Detroit, Michigan, where Chrysler had its principal office and the insurance company maintained an agency; that the premiums were paid at Detroit, Michigan, by Chrysler on all cars sold at retail whether or not the insurance was accepted; that the certificates under that policy, after being counter-

signed at Detroit, Michigan, were mailed from and issued at Detroit, Michigan; that claims were to be presented and losses paid at Detroit, Michigan, loss checks being mailed from that State; that the cars were sold by Chrysler in interstate commerce at Detroit, Michigan, for a definite price to the distributors and dealers; that no premium as such was paid by the distributors or dealers to Chrysler; that the distributors and dealers were the customers and not agents of Chrysler, purchasing and paying in cash for cars which they sold at retail as their own property; that the money received from the retail purchaser belonged to the distributors and dealers and no part of it was ever accounted for or remitted to Chrysler; that the distributors and dealers did not remit or transmit any premium of insurance to either Chrysler or the insurance company; that Chrysler made no refund, rebate or allowance of any nature to either a dealer or retail purchaser on the purchase price of a Chrysler car because the dealer or purchaser disapproved of or did not accept or want the insurance in respect to that car provided for in the blanket policy; that the insurance company did not direct or pay the dealers nor in any way authorize them to represent the insurance company; and that the dealers did not hold themselves out as insurance agents.

Notwithstanding these facts, however, the court of the Western District of Wisconsin concludes (9 Fed. (2d) 666 at p. 671):

“The dealer in Wisconsin clearly does these things in Wisconsin—

1. He sells the car, including insurance.

2. He collects the price, including the premium.  
(That he does not remit it is of small moment, having already advanced it, receiving nothing for it.)
3. He fixes the term of insurance.
4. He selects the beneficiaries—purchasers and financier.
5. He notifies the complainant of these details by mail.

All these things except the last are essential to the completion of the insurance contract, and bring it into actual existence and occur in Wisconsin between residents of that state, the dealer acting with authority under the Michigan contract.”

and the court for the Southern Division of Maine said (9 Fed. (2d) 674, at p. 677):

“When he sells a car he is clearly making himself an instrument for effecting the insurance of it, although such insurance is incidental and deemed by him to be of little consequence. He effects this insurance in behalf of the Palmetto Company; and he has authority to so effect it. When he reports the sale to the Sales Company at Detroit, giving the name of the purchaser, the date of the sale, the motor number, the style of the car, and all elements required in order to issue an ordinary insurance policy,—and upon which certificate is actually issued—he seems to us to be giving the necessary information for effecting the insurance. In giving such information he is clearly acting for the Insurance Company. Within the meaning of the statute we think he ‘assumes to be an agent’ and ‘procures risks and receives money for premiums,’ even though such premiums are submerged in the term ‘delivery charges’ and other expressions.”

Considering the elements which those courts thought conclusive in the order in which the courts name them in their opinions, it is apparent that the dealers are not insurance agents.

1. The dealer sells the car only. He does not sell insurance. When the dealer sold a car the retail purchaser and others having an interest in that car became beneficiaries of a contract already existing at Detroit, Michigan, because of the provisions in that contract. The dealer might have disapproved of the insurance. He might not have known of the insurance. He might even have told the retail purchaser that the car was not insured under the blanket policy. Nevertheless under the provisions of the blanket policy the purchaser was insured. The dealer might have sold the car for less than he had paid for it so that by no chance could he be considered as selling insurance or collecting a premium, notwithstanding which, the insurance protection under the blanket policy would extend to the purchaser and other beneficiaries in respect to that car. Illustrations might be multiplied evidencing clearly that the dealer sold only the car—his own property—and that he did not sell insurance.

2. The dealer collected the price of the automobile and he did not collect an insurance premium. Let us assume that he sold the car after the expiration of the term of the blanket policy. He would nevertheless have sold it at a price to reimburse him for what he paid for it and yield him a profit. The purchaser in that event however would not have been insured, although the purchaser in that case might have paid the same price as that paid by an insured purchaser the day previous to the expiration of the blanket

policy. Nor is it true that the dealer had already advanced the premium and received nothing for it. What the dealer advanced was the cash wholesale price of the car to his vendor,—Chrysler, or a distributor—and for it the dealer received a Chrysler car. If the dealer had advanced an insurance premium and had never sold the car or had sold the car after the expiration date of the blanket policy, he might have been entitled to a return of his premium. He got no refund or return premium because Chrysler had received no premium from him—it had received the sale price of its car. Furthermore, Chrysler would not pay a premium to the insurance company in respect to cars sold after the expiration of the policy, but it would keep what it had received from the dealer for its product—evidencing clearly that it never received a premium.

3. The term of the insurance was fixed by Chrysler and the insurance company when they made the blanket insurance contract at Detroit, Michigan. The dealers and distributors had no voice in that contract, they could not change or modify its terms. They could not enlarge or lessen the length of the term of insurance as provided for therein. There are no facts or reasonable inferences from facts to justify the statement of the court that the dealers “fixed the term of insurance”.

4. Nor does the dealer select the beneficiaries of the insurance. By the retail sale of a car—the purchaser becomes a beneficiary; by the sale or discount of the installment obligations, the financier becomes a beneficiary. This is a “for whom it may concern” policy, and among other things it provides:

"All banks, trust companies, persons, firms or corporations with or to whom Commercial Credit and/or Affiliated Company and/or Other Finance Companies hypothecate, trustee, pledge, transfer, assign and/or negotiate notes and/or security instruments, shall be protected by this insurance."

They too are beneficiaries of the contract and they are selected by the financiers and not by the dealer, as the dealer has no control over what the finance companies may do with the instalment obligations after they have purchased them.

5. The dealer notifies Chrysler of his retail sales, as he has always done as a routine matter in the automobile business. The automobile manufacturers usually make use of such information for advertising purposes, but Chrysler also used it in its insurance arrangement. The dealer made no application for insurance when he reported his sales, and in fact he had no way of knowing what Chrysler did or might do with this information.

It is interesting to note that the Wisconsin court considers the notification of the sales by the dealer to Chrysler as unessential, while the Maine court uses this circumstance as conclusive evidence that the dealer is an agent of the insurance company and is acting on its behalf and by its authority. A reading of the blanket policy is sufficient in itself to refute the conclusion of the Maine Court. The policy provides that the insurance is automatically in favor of all beneficiaries regardless of whether the sale is ever reported or a certificate issued. (See *supra*, pp. 9, 10.)

A further study of the state statutes, with these facts well in mind, should satisfy this court that the conclusions of the lower courts were erroneous in holding those statutes applicable.

### Wisconsin Statutes.

The various Wisconsin statutes which relate to these cases are printed in full in the appendix to this brief.

Section 203.07 of the Wisconsin Statutes of 1925 provides, among other things:

“All future contracts of insurance against the risk of loss or damage by fire or lightning upon property in this state shall be held to be made and effected within this state.”

That statute is not cited in the opinion of the Wisconsin court but must be relied upon in order to constitute the insurance a Wisconsin contract. The purpose of the statute to prohibit the making of a contract beyond the state with reference to property within the state set forth by the Wisconsin courts (*Presbyterian Ministers' Fund v. Thomas*, 126 Wis. 281; *Rose v. Kimberly & Clark Co.*, 89 Wis. 545, 550), is convincing proof that it runs counter to the Federal Constitution. *Aetna Life Ins. Co. v. Dunken*, 266 U. S. 389.

The statutes mentioned in the opinion of the court for the Western District of Wisconsin are *Section 201.41 (1)*, which provides that no insurance company shall transact insurance business in the state without a license, and provides how that license may be obtained and kept; *Section 201.44*, which provides that no policy shall be issued or de-



livered except through a duly qualified agent, and that any person soliciting or placing insurance without complying with the section shall in addition to other penalties be liable personally upon the policy; *Section 209.04* provides that no person, officer, broker, agent or sub-agent of an insurance corporation required to pay a license fee shall act or aid in any manner in transacting the business of such corporation in placing risks or in collecting any premiums or assessments or effecting insurance, without procuring from the insurance corporation a certificate, and shall not, after the license of any such company has been revoked or expired, do or perform any act on behalf of the insurance corporation. Penalties are provided for violation of the statutes. *Section 209.05* provides that every person or member of a firm or corporation that solicits insurance on behalf of an insurance corporation or a person desiring insurance, or transmits an application other than for himself to or from any such insurance company, or who makes any contract for insurance or collects any premiums or in any manner aids or assists in doing either or in transacting any business of like nature or advertising of it shall be considered an agent of the company "*unless it can be shown that he received no compensation for such services*"; *Section 348.488* provides that if any unauthorized insurance company or other unauthorized insurer takes or receives any application for insurance "*in this state*" or receives or collects any premium for such insurance, it shall be fined, and any officer, agent, solicitor or broker "*or other employee*" of any such unauthorized insurance company who takes or receives an application for insurance "*in this state*", or receives or collects the premium or any part thereof, shall be guilty of a felony, and provides the punishment.

The most pertinent of those statutes are *Sections 209.04, 209.05* and *Section 348.488*. These sections are penal in character and should be strictly construed.

*Section 209.04* and *Section 209.05* are companion statutes, and it appears from *State v. Farmer*, 49 Wisconsin 459, that these two sections were originally enacted as Sections 1 and 3 of the same chapter, being Chapter 13 of the Laws of 1871. *Section 209.04* says—

“(1). No person, officer, or broker, agent or sub-agent of any insurance corporation of any kind required to pay any tax or license fee to the state shall act or aid in any manner in transacting the business of or with such corporation in placing risks or in collecting any premiums or assessments or effecting insurance therein, without first procuring from the insurance corporation a certificate of authority.”

There must be some definite relationship between the corporation and individual acting or presuming to act on behalf of or for the corporation, to come within the statute. The definition of an agent in *Section 209.05* is qualified by the phrase “unless it can be shown that he receives no compensation for such service”. As has been repeatedly mentioned, the dealer sells his own property—he is the absolute owner of the automobile—and the purchase price he receives from the retail purchaser is the proceeds of his own property. He does not forward, remit or transmit any part of the proceeds, but keeps them to reimburse himself for cost of the car, plus his profit. Because Chrysler, the dealer’s vendor, paid premiums for the insurance, the lower courts considered that the insurance premium was wrapped up in the wholesale purchase price of a car, paid by the dealer and by him passed on to the purchaser in the retail price of the car.

The dealer received his usual customary profit on the car, which he had always gotten even before Chrysler, his vendor, made the blanket insurance contract. Admittedly the insurance company did not pay the dealer any remuneration. It is clearly *non sequitur* to say that the dealer received compensation as an insurance agent because he sold the automobile at a price sufficient to reimburse him for the cost of the automobile to himself, plus yielding him his usual profit on the sale.

The broad prohibitory statement in the statute against "acting or aiding in any manner in transacting the business of or with such corporation" is limited further by the words "in placing risks or in collecting any premiums or assessments or effecting insurance therein", meaning within the state.

The term "placing risks" involves the idea of a preliminary investigation or at least some overt act. The blanket policy automatically places the risk regardless of what the dealer might or might not do. The dealer is powerless to prevent the placing of the risk. The collecting of premiums or assessments, being coupled with the expression "transacting a business of or with such insurance corporations" further precludes the idea of the dealer being an agent. The collection of the premium must concur with the relationship with the insurance company to offend the statute. The dealer has no communications or relations whatsoever with the insurance company. He did not advertise or hold himself out as representing an insurance company. He paid the purchase price for his cars to his vendor—Chrysler—and not to the insurance company. By no stretch of the imagination could he therefore be considered as collecting a premium of, for or with the insurance company.

Furthermore, under the language of the statutes the dealer must act or aid in the transacting of an insurance business for an insurance corporation required to pay a tax or a license fee to the state. The Palmetto Insurance Company was not qualified to do business in Wisconsin and was not transacting business therein, and therefore was not subject to any tax. See page 55 of this brief.

The decisions of the Wisconsin Courts interpreting the insurance statutes as defining an insurance agent, while not numerous, nevertheless confirm the construction given in this brief. In the very recent case of *Bristol & Company v. Railroad Commission of Wisconsin* (Circuit Court for Dane County, decided July 19, 1926, not yet reported, but printed in full in the appendix, page 79, of this brief) the following findings of fact and conclusions of law were made:

That Bristol and Company was the trade name of Frederick C. Bristol, a resident of Illinois, who underwrote bonds of the Kankakee Hostelry Company, of Illinois, the principal and interest of which bonds were guaranteed in part by United Lloyds of America and in part by Federal Surety Company, neither of which surety companies were qualified to do business in Wisconsin. Bristol paid the premiums in Illinois. Bristol in Illinois sold the bonds to Guaranteed Bond Company of Milwaukee, Wisconsin, and the Guaranteed Bond Company of Wisconsin sold the bonds to residents of Wisconsin so guaranteed by the two non-admitted surety companies. Later Bristol made application for a permit to sell the bonds in Wisconsin, which application was denied. In the mandamus proceedings before the Circuit Court for Dane County, Wisconsin, Judge Hoppmann said:

“The sale and delivery by the said Guaranteed Bond Company of the said bonds in the State of Wisconsin, including said guarantee, does not constitute the doing of a guarantee or surety business in Wisconsin on the part of the said United Lloyds of America or the said Federal Surety Company.”

The court set aside the order of the Commission in refusing to grant permission to sell the bonds, and directed the commission to issue a permit. This case seems to be practically identical with the cases now considered by this court.

These sections of the statutes have never been construed by the courts of Wisconsin as applying to any other than actual insurance agents in the ordinary sense of that term, including of course brokers where they represent the insurance company as well as the assured. See:

- State *v.* Farmer, 49 Wisconsin 459;
- John R. Davis Lumber Co. *v.* Hartford Fire Insurance Co., 95 Wisconsin 226;
- Schomer *v.* Hekla Fire Ins., 50 Wis. 575;
- Ocean A. & G. Corp. *v.* Combined L. P. Co., 162 Wis. 255.

Opinions on these statutes, however, have been given by the attorneys general of Wisconsin. Attorney General Gilbert (O. A. G. Wisconsin 1908, page 500) says:

“To make an individual or corporation liable for collecting and transmitting premiums under the provisions of Section 1977, Statutes of 1898 (Sec. 209.05, Stats. 1923), two things must necessarily be established. First, the collecting of the premium as an agent of the company; second, a charge or com-

pensation must be received for the service so rendered.

"I am of the opinion that where no compensation be charged or received in excess of the usual rate of exchange for transmitting funds that the charge so made is for transmitting the money and cannot be held to be a charge for collecting, and the banks so transacting the business and not otherwise employed or compensated by the insurance company, do not come within the description of an agent of an insurance company under the provisions of said Section 1977."

and Justice Owen of the Wisconsin Supreme Court, while Attorney General of Wisconsin, rendered an opinion (O. A. G. Wis. 1916, Vol. V, Page 442) that an examining physician could not be held to be a person acting or aiding in the placing of insurance for an unauthorized company under *Section 209.04* (then *Section 1976*) or under *Section 209.05* (then *Section 1977*). He held that the statutes could not be construed as to include parties not generally regarded as insurance agents.

*Section 348.488* discussed by the lower court provides among other things:

"Any officer, agent, solicitor or broker or other employe of an unauthorized insurance company"

who violates the provisions of that statute shall be guilty of a felony. As this is a severe penal statute, making it a felony to do the prohibited acts it should, following the general rule as well as the rule of Wisconsin, be strictly construed. See:

State v. Columbian Nat. Life Insurance Co., 141 Wis. 557.

The statute in the first place applies only to those having a direct relationship with the unauthorized insurance companies, amounting to an employment. The words in the statute "other employe" necessarily refer back and apply to the words "agents, solicitors and brokers". See

U. S. v. Standard Brewery, Inc., 251 U. S. 210.

The statutory definition of agent in Section 209.05 cannot be extended to give a different construction or meaning to the words of Section 348.488; and the word agent in that statute, as we previously have seen, has been limited to one who receives a compensation for his services.

In the second place, the prohibited acts are the taking or receiving of an application for insurance in the state, or the receiving or collecting of a premium of insurance, neither of which, as we have seen, is done by the dealers in Wisconsin. What they do they do on their own account and in their own business.

Section 348.488 was an amendment of Chapter 375 of the Laws of 1925, which was formerly 4575S of the Statutes of 1923. The 1923 statute was a prohibition against the taking of an application "on property in the state". It was a companion section to what is now 203.07, which we have seen, is clearly unconstitutional, *supra*, p. 26. It was evidently the intention of the statute in its original form to place a burden on and restrict the making of policies of insurance outside the state on property within the state. The amendment of 1925 modified this prohibition to the receiving of an application for insurance "in this state", and the penal provisions relative to agents and other employes was likewise limited to "insurance in this state". The statute by its own language, therefore, cannot be applied to a situ-

ation where the risk of insurance in the state is covered by a contract made outside the state.

Section 201.44, prohibiting the issuing or delivering of a policy in the state except through an authorized agent, and making any company or person soliciting or placing insurance in violation of the statute personally liable upon such a policy or contract of insurance, is not applicable because the dealers do not deliver any policies or certificates of insurance. Moreover, no policies or certificates are delivered to anyone *in the state*. The certificates advising of the automatic insurance under the blanket policy are mailed from Detroit, Michigan, by the insurance company to the purchasers and other beneficiaries. The view of the court that the policy is delivered in Wisconsin "through the postal service as the agent of the insurer" is manifestly unsound. In any event the dealers would not be amenable for the delivery by the postal service.

### **Maine Statutes.**

Section 122 which applies to brokers who receive remuneration is not discussed by the court as apparently it is accepted as not applicable.

The only section of the Maine statutes cited in the opinion of the lower court as being violated by the Chrysler dealers is Section 121 of Chapter 53 R. S., as amended by Chapter 25 P. L. 1917. The penalties of that statute apply "if any person solicits, receives or forwards any risk or application for insurance to any company without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums".



The Maine Federal Court, while following mostly the opinion of the Wisconsin court, nevertheless bases its decision for holding the dealer an agent upon the circumstances which the Wisconsin court considered unessential, i. e., the report sent by the dealer to his vendor, Chrysler at Detroit. Of this the court says:

“When he (meaning the dealer) reports the sale to the sales company at Detroit, giving the name of the purchaser, date of the sale, motor number, style of car, and all the elements required in order to issue the original insurance policy and upon which the certificate is actually issued, he seems to us to be giving the necessary information for effecting the insurance. He is clearly acting for the insurance company. Within the meaning of the statute we think he assumes to be an agent and procures risks and receives money for premiums even though such premiums are submerged in the terms ‘delivery charges’ and other expressions.”

The reports referred to are merely those given in the routine of the business and which have always been given by dealers to Chrysler, as is customary in the automobile business. They are not applications for insurance and make no reference to insurance. Moreover, the insurance is effective under the blanket policy whether or not the reports are made. It is true that the information is used by Chrysler at Detroit to have a certificate issued from Detroit by the insurance company to the purchaser and other parties interested, but the information is also used for advertising and other purposes.

In any event, the dealer gives the information to his vendor, Chrysler. The dealer has no communication what-

soever with the insurance company. The court is therefore in error in its conclusion in saying:

“In giving such information he is clearly acting for the insurance company”.

Furthermore the essential qualifying adverb in the statute—“fraudulently”—is omitted in the conclusion of the court that the dealer “assumes to be an agent” in violation of the statute. It is a penal statute and must be strictly construed. It is necessary, therefore, to prove that the dealer “fraudulently” assumes to be an agent. There is nothing in the record to show, and in fact the dealer never has held himself out to the purchasers as being an agent of the insurance company.

When the court says that the dealer effects the insurance in behalf of the insurance company and has authority to do so, it merely assumes the question. The preceding words by the court would seem to contradict the assumption and assuredly establish innocence of any fraud on the part of the dealer. (9 Fed. (2) 674, 677):

“It is true that the dealer, who is himself the owner of the cars, does not hold himself out affirmatively and formally to be an insurance agent. He is not thinking much about insurance. He is bent on selling his cars. When he sells a car he is clearly making himself an instrument for effecting the insurance of it, although such insurance is incidental and deemed by him to be of little consequence.”

It follows, therefore, that he could not be fraudulently assuming to be an agent.

The definition of agent appears in Section 31 of Chapter 53:

“An agent authorized by an insurance company whose name is borne on the policy is its agent in all matters of insurance; any notice required to be given to said company or any of its officers by the insured may be given to such agent.”

The obvious purpose of Section 121 is to provide for the license of those who are in fact and in name agents of insurance companies qualified to do business in Maine. The only requirement for a license is proof of the fact of agency. The penal provisions of the statute give control over foreign insurance companies, for they cannot get an agent a license unless they themselves have obtained a license.

The section of the Insurance Act corresponding to the present Section 121, prior to the passage of Chapter 112, P. L. 1891, was worded slightly differently, except as to the prohibitory provisions against soliciting, receiving and forwarding risks and applications, and fraudulently assuming to be an agent, which are identical in language with the present statute.

In *State v. Hosmer*, 81 Maine 506, construing the former statute, Chapter 49, Section 73 P. L. 1883 (as amended by 109 P. L. 1887) it was held essential to an indictment that the vendor be alleged to be an agent. The court said at p. 509:

“\* \* \* Under the terms of the statute one can be licensed only to act as an agent for some particular insurance company, after furnishing the required evidence of his appointment as such agent. The offense consists in acting as such agent without first complying with the statute and receiving a license to act as such agent. In this count, there is no allega-

tion that the defendant in soliciting the applications for insurance, as set forth, acted or claimed to act as agent for the insurance company named."

It is evident that the Maine court in following the decisions of the Wisconsin court is not justified in the inferences it makes from the facts. The Chrysler dealers in Maine are not employed or engaged by the insurance company, nor do they act as such or pretend to act as such, either fraudulently or otherwise. What they do, they do on their own account and in their own business.

### **Dealers Are Not Regarded as Agents.**

We have seen that the Statutory Court for the Southern District of New York (*Palmetto Fire Insurance Co. v. Beha* (not yet reported), held the dealer was not an insurance agent (*supra*, pp. 19, 20); and in an action by the Palmetto Fire Insurance Company to enjoin the Commissioner of Insurance of the State of Ohio from cancelling its license to do business because of the operation of this contract with the Chrysler Sales Corporation, the Statutory Court for the Southern District of Ohio (*Palmetto Fire Insurance Co. v. Conn*, 9 Fed. (2d) 202, 204) although refusing to grant an injunction, said—

"Chrysler retail car dealers are not insurance agents, nor are they qualified or have they attempted to qualify as such under the insurance laws of the state."

In the State of Minnesota an arrest was actually made by the Commissioner of Insurance of a Chrysler automobile dealer and the case was tried in the Municipal Court

of the City of St. Paul in an action of State of Minnesota *v.* Maitland E. McKee (not reported). After all the evidence had been introduced, establishing facts substantially the same as those set forth in the bills of complaint in this case, the court dismissed the action because it was satisfied there was a total failure to prove solicitation of insurance.

In some other states the matter was determined by the opinion of the attorney general of the state. In the State of Alabama the attorney general, although holding that the license of the Palmetto Fire Insurance Company in that state could be revoked (which part of his opinion we believe unsound) nevertheless advised that the Chrysler automobile dealers should not be regarded as agents and said (Ala. O. A. G., Aug., 1925)—

“The only remaining question is as to whether or not Chrysler dealers are insurance agents and must procure licenses as such. They have absolutely nothing to do with the contract. They solicit no insurance, have no connection or correspondence whatever with the Palmetto Company; did not put the insurance on the car and cannot take it off. They did not receive or transmit the certificate of insurance, nor do they collect or remit any premiums, nor did they do any act or thing in the making or consummating of the contract of insurance. In my opinion there is no reasonable interpretation of law whereby they may be deemed to be insurance agents under the above stated facts, and hence they may not be required to procure licenses as such.”

When the insurance plan was enacted by the Chrysler Sales Corporation at Detroit, Michigan, a ruling was required from the Insurance Commissioner of that state as to whether or not the dealers in Michigan might be regarded

as insurance agents. In a letter to the Chrysler Sales Corporation, July 1, 1925, Commissioner L. T. Hand of Michigan said—

“There could be no violation of the above quoted section of the law by the dealer, as he is not in my opinion either directly or indirectly aiding or assisting in transacting any business for or in behalf of any insurance company.”

In all cases in all the states interpreting statutes similar to those involved in these cases, and even under broader statutes, which a thorough search reveals, convictions of alleged agents have been sustained only where a real relationship of principal and agent has existed; and where it has not been shown that the agent acted for or in behalf of the insurance company or the insured, the cases have been dismissed.

In *French v. People (Col)*, 6 Colo. App. 311, 40 Pac. 463, it was held that a person who was not in fact an agent for the insurance company could not be constitutionally brought within such a statute, although he acted as an expert in Colorado in respect to inspecting the property and advising in regard to adjustment of loss.

In *Connelly v. Pickard*, 17 Ohio Dec. 116, it was held that an agent who collected rents and who for compensation recommended an unauthorized insurance company could not be held to be within the provisions of the Ohio Statutes, which prohibited in any manner aiding in the transaction of the business of insurance of any unauthorized company, unless duly authorized by the company and duly licensed by the Superintendent of Insurance. The court said: “The test is whether the person thus aiding is acting in such capacity that his is the act of the company.”

*Feagin v. Royal Ins. Co.* (So. Car. 1923), 122 S. C. 532, 115 S. E. 808. Held, a statute declaring that a person who inspects a risk is an agent of a foreign insurance company, has no application except where the person making the inspection was then acting for the company.

In *State v. Geddes* (Md. 1915), 127 Md. 166, 96 Atl. 353, it was held that a clerk employed by licensed insurance brokers, who delivered a policy of insurance and collected a premium was not violating the state statute, although he did not have any license. The court held that the statute was intended to apply only to parties who negotiated contracts of insurance and not to parties who simply did some incidental act in connection with the business.

In *First National Bank of Ottawa v. Renn* (Kans. 1901), 63 Kans. 334, 65 Pac. 698 it was held that for a mortgagee, at the request of the mortgagor and his purchaser, to undertake to secure and to secure the consent of the foreign unlicensed insurer to assignment of the policy to the purchaser was not an application for insurance, nor was it "aiding a foreign unlicensed insurance company in transacting business in Kansas." The policy covered property in the state.

In *People v. Imlay*, 20 Barb. (N. Y.) 68, it was held that a statute prohibiting any person from in any manner aiding in transacting the insurance business of any company or association not incorporated under the laws of New York did not apply to anyone except one who was in fact acting for the company and so acting in New York, and did not apply to one who was acting solely as agent for the insured.

In the following cases the offending person was actually a broker or agent and had done some overt act of insurance in the state.

*Nutting v. Massachusetts*, 183 U. S. 553;  
*American Fire Ins. Co. v. King Lumber & M. Co.*, 250 U. S. 2;  
*Hooper v. California*, 155 U. S. 648;  
*Cain v. State* (1913) 103 Miss. 701;  
*Bartlett v. Rothschild* (Pa. 1906), 214 Pa. 421;  
*Anderson v. Northwestern Fire & M. (N. D. 1924, not yet officially reported but appearing in 201 N. W. 514)*;  
*State v. Arlington* (N. C. 1911) 157 N. C. 640;  
*Vertrees v. Head & Matthews* (Ky. 1910), 138 Ky. 83.

## II.

**The insurance in these cases is by virtue of a Michigan contract. The automobile dealers do not negotiate, effect or consummate the insurance contracts. The insurance company transacts no business in Wisconsin or Maine. The Commissioners of Wisconsin and Maine have no jurisdiction.**

Because the operative effect of the Michigan blanket policy is postponed until the retail sale of a Chrysler car, both of the lower courts therefore conclude that the policy is not a completed insurance contract. The Maine court says (9 Fed. 2nd, 674, 676) :

“The Michigan contract appears to us not to be a completed insurance contract but an agreement for future insurance,”

and the Wisconsin court says (9 Fed. 2nd, 666, 671) :

“Having these facts in mind and the thought that insurance is a matter of contract between persons,



we are confronted immediately by the fact that the Michigan contract is not an insurance *in praesenti* but rather a contract to insure in the future."

In order to disprove the claim of plaintiffs-appellants that the insurance is automatically effective, by virtue of the Michigan blanket policy, both of the lower courts, without warrant, ascribed to the plaintiffs-appellants the theory of insurance as a commodity.

A statement to this effect by the Wisconsin court is quoted approvingly by the Maine court (9 Fed. 2nd, 666, 670, 9 Fed. 2nd, 674, 679):

"One of the important details of this contract and plan is that the effective date of the insurance is postponed until a car is sold at retail. \* \* \* When so sold, complainant claims, the insurance becomes automatically effective, by virtue of the Michigan contract. Plainly the theory of the complainant is that this insurance is something that attaches to and follows an automobile upon its course through the market as though a part or accessory, and that the dealer who sells the car has nothing to do with the insurance item; he merely sells the car with all its equipment including the insurance."

No such theory was or is urged by the plaintiffs-appellants. It would be fatal to their cases because then the dealer might well be regarded as selling it as an accessory to the car. On the other hand, both the Wisconsin and Maine courts have unconsciously, or unwittingly, adopted the very theory they ascribe to the plaintiffs. In support of its conclusion that the dealer is an insurance agent, the Wisconsin court says (and the Maine court endorses the statement): "He sells the car including the insurance."

These courts therefore must have thought of the insurance as a part of the car—an accessory—otherwise they could not have concluded that the sale of the car involved also a sale of the insurance.

The postponement of the operative effect of the contract should afford no difficulty in accepting the blanket policy as a completed contract. The operative effect of policies "for whom it may concern" usually are postponed both as to an identification of the property covered and of the person or persons insured. See:

*Waring v. Indemnity Fire Ins. Co.*, 45 N. Y. 606;  
*Rhind v. Wilkinson* (1810, C. P. Eng.), 2 Taunt  
 237, in which latter case it is said that "it is  
 an every day's practice to insure goods on a  
 return voyage long before they are bought."

*Henshaw v. Mutual Safety Ins. Co.* (C. C. N. Y. 1848),  
 11 Fed. Cas. 1189, 2 Blatchf. 99, in which the court says:

"This is the ordinary, and, perhaps, the most serviceable class of insurance. Cargoes can be purchased and laden from port to port on trading voyages under the protection of policies already in existence without waiting for the means of obtaining satisfactory insurance after the interest is acquired. The same principle applies to the changeable proprietorship of vessels."

And this Court also said of such policies in *Hagen, et al. v. Scottish Union Ins. Co.* (1902), 186 U. S. 423, 430:

"\* \* \* it is not necessary that at the time of effecting the insurance the person taking it out should intend it for the benefit of some then known and particular individual, but that it would cover the case of one having an insurable interest at the

time of the happening of the loss and who was intended to be protected at the time the party took out the insurance."

And at p. 433 the Court continues:

"The words 'on account of whom it may concern' do not refer to those interested in the policy simply at the time it is taken out. The terms refer to the future. It is not a question of the persons concerned when it is taken out, but of those who may be concerned when the loss may occur, and who were within the contemplation of him who took out the insurance at the time that he did so. It is on account of those who in the future, at the time of the happening of a loss, have the insurable interest and in regard to whom the policy will be applied. We think this is the common sense interpretation of the language used, and that it is justified and required by the authorities, many of which are cited in *Hooper v. Robinson*, 98 U. S. 528."

It is accepted law in this country ever since *Paul v. Virginia*, 8 Wall. 168, that insurance is a contract and not a commodity. It is not a subject of barter and sale. It is a contract of indemnity to a person and not to property. Nevertheless, insurance is in respect to property. The lay language used in insurance circles properly expresses the legal concept, i. e. "the person is insured and the property covered". But this does not justify the conclusions of the Wisconsin and Maine courts that there is no contract of insurance unless a person is insured *eo instanti*. Such a conclusion resulted from those courts having mistaken the necessity of an insurable interest at the time of loss for an insurable interest at the time of the contract. It

is well settled law that an insurable interest at the time of loss is sufficient.

*Hooper v. Robinson*, 98 U. S. 528;

*Henshaw v. Mutual Safety Ins. Co.* (C. C. N. Y. 1848), 11 Fed. Cas. 1189; 2 Blatchf. 99;

*Duncan v. China Mutual Ins. Co.*, 129 N. Y. 237.

The lack of an insurable interest at the time of making the contract is no longer regarded as invalidating the contract as a wagering one against public policy. *Sun Insurance Office of London v. Henry Merz*, 64 N. J. Law 301.

It is customary for insurance companies, and particularly those covering marine hazards (automobile insurance is a development of marine insurance), to insure unknown persons in respect to after acquired property and the insured's interest need not be connected with or derived from the person procuring the policy and paying the premiums therefor. Policies of this nature—issued "for whom it may concern"—have been used by marine insurance companies for many years and more recently have been extended to business generally.

In *DeHahn v. Hartley* (1786 K. B. Eng.), 1 D. & E. Term Rep. 343, the policy was drawn in London on a ship then at Liverpool to cover ship and cargo at and from the west coast of Africa to the British West Indies.

*Rhind v. Wilkinson* (1810 C. P. Eng.), 2 Taunt 237;

*Wilson & Co. v. Hartford Fire Ins. Co.* (Missouri Sup. Ct. 1923), 300 Mo. 1, 254 S. W. 266;

*Hooper v. Robinson*, 98 U. S. 528.

The case of *Carpenter v. Providence Co.*, 16 Peters 495, 503, 41 U. S. 495, cited by the lower courts, is not authority

for the proposition advanced by those courts that the Michigan blanket policy is not an insurance contract because at the time of its execution the purchasers were unknown and that there could be no contract as there were no persons insured. An examination of that case as well as the cases cited in and relied upon by it, including the quotation from Lord Hardwicke, will convince this court that the law of the cases do not apply to the facts of the instant cases under consideration.

In *Carpenter v. Providence Co.*, 16 Peters 495, 41 U. S. 495, Mr. Justice Story said that the mortgagor of property might be insured up to the value of the property while a mortgagee could be insured only to the extent of the debt owing to him; that each might separately insure to the extent of his own distinct interest; that the mortgagor cannot recover on the policy issued to the mortgagee because the insurance company paying the mortgagee is subrogated to his claim against the mortgagor, nor could the mortgagee recover under the policy issued to the mortgagor as the policy is a contract with the mortgagor only and not an incident of the property so as to extend to those having an interest in it including the mortgagee. In *Lynch v. Dalzel*, 3 Brown Parl. Cases, 497 (Eng. 1729), one of the cases relied on by Mr. Justice Story, it was held that an assignee could not sue on a policy which was expressly made non-assignable. In *Sadlers Co. v. Badcock*, 2 Atkyns 554, 556 (Eng. 1743), from which the quotation by Lord Hardwicke is taken, the policy was issued to a lessee and before the policy expired the lease terminated and the property passed to another lessee. The court denied recovery to the second lessee as it said the person (the first lessee) and not the property was insured and furthermore the lease having

expired there was nothing to indemnify as there was no insurable interest at time of loss.

*Rayner v. Preston*, L. R. 18 Ch. Div. 1 (Eng. 1881 C. A.), which has been misinterpreted by many state courts, could have been more aptly cited as an authority than the cases relied on by the lower courts. That case held that insurance was a personal contract and did not run with the land. The dissenting opinion by Lord Justice James that the vendor of the property held the policy as a trustee for the vendee has been made the basis of many opinions in American courts that the vendee being unable to get the destroyed property in accordance with his contract was equitably entitled to the indemnity of the vendor for that property afforded by the policy. The law of the case, however, was right in that the policy named the vendor only and did not extend to the vendee. If the policy had contained the provision that Lord Justice James tried to read into it, i. e., that it was issued to the vendor for account of the vendee or for account of whom it may concern, there would have been no disagreement between him and Lord Justice Brett.

Mr. Justice Story also in *Columbia Insurance Company v. Lawrence* (U. S. 1836) 10 Peters 507, 35 U. S. 507 laid down the rule that neither by the principles of law nor equity had a mortgagee a right to the benefits of a contract underwritten for the mortgagor because it was a personal contract and not an incident of the mortgage.

Usually the insurer intends to indemnify only the person named in the policy and the court may properly presume such an intention if it is not expressly stated to the contrary because the contract being aleatory it would increase the moral hazard and risk of the insurer without his

consent to extend the policy to others than those provided for in it. But the insurer may provide for others in its policy and there is no authority for limiting the benefits of the agreement to only the contracting parties.

While the lower courts assume the premise that the Michigan blanket policy is not a contract, they nevertheless rely upon the postponement of the operative effect of that policy as conclusive evidence that through the instrumentality of the dealers the insurance company secured an "adoption" of the insurance by the purchasers—thus making the dealers amenable to the insurance regulatory statutes of the states. It is not clear in what sense these courts make use of the term "adoption". They seem to intend it, however, as synonymous with the "making" of several distinct contracts by the purchasers at the time of the retail sale. The cases cited, however, are authority for an agency ratification theory, i. e., that the purchaser by accepting the benefits of the insurance ratifies the acts of Chrysler as an agent in having effected the contract.

The essential elements of the making of a contract are entirely lacking between the purchaser and the insurance company when the car is purchased at retail. Otherwise the arrangement would have to be considered as a continuing offer to be accepted or rejected by the purchasers and such an offer could be recalled by the insurance company before its acceptance, a position which provisions in the blanket policy, however, preclude the insurance company from taking. Furthermore, the purchaser might not know of the blanket policy until after the happening of a loss. It is well settled that under such policies the assured is indemnified even though he did not know of the insurance until after the loss.

*Hooper v. Robinson*, 98 U. S. 528;

*Hagan v. Scottish Union Ins. Co.*, (1902) 186  
U. S. 423;

*Fire Insurance Assn. of England v. Merchants  
& Miners Transportation Co.*, (1886) 66 Md.  
339.

If, however, by adoption these courts mean the making of several new contracts and the date of the adoption should be postponed until after the happening of the loss, there would then be the anomalous position of an assured making a contract of indemnity when there was nothing to indemnify—the loss having already occurred—which would do violence to the fundamentals of insurance as an indemnity contract. Furthermore, the purchaser is not the only beneficiary of this insurance. The dealer, the financing companies, and the parties to whom the deferred obligations of the purchaser might be subsequently negotiated are all beneficiaries. They may reside at distant points. In fact, a dealer in Wisconsin or Maine might sell the purchaser's installment obligations to the Commercial Credit Company at Baltimore, Maryland and that company might pledge those obligations with a trust company at New York as security for its collateral trust notes sold to note holders throughout the country. All of these would be beneficiaries of the insurance. To follow the theory of the lower courts, it would be necessary, therefore, to consider the contract as having been made in each of the several jurisdictions upon the parties becoming beneficiaries thereunder. Moreover, a purchaser might refuse to accept the insurance on the day of the purchase of a car and obtain his own insurance. By the provisions of the blanket policy



it then becomes excess insurance protecting the purchaser to the extent that he is unable to get recovery from the insurance effected by himself. If by adoption it is meant that the purchaser makes a contract in Wisconsin and Maine at the time of the purchase of a car, there would arise then the curious situation of the offeree declining an offer at the time that it was made but the offeror being irrevocably bound to keep the offer open until such future time as the offeree might change his mind.

The purchaser is not a contracting party. He is a beneficiary of a contract made between two other parties in a foreign state and has the right to enforce the contract as such third party.

*Symmers v. Carroll*, 207 N. Y. 632, 101 N. E. 698.

*Waring v. Indemnity Fire Ins. Co.*, 45 N. Y. 606;

*Wilson & Co. v. Hartford Fire Ins. Co.* (Missouri Sup. Ct. 1923) 300 Mo. 1, 254 S. W. 266;

*Sleeper v. Union Ins. Co.*, 65 Me. 385.

The difficulties in which the lower courts became involved can be avoided if it is ever kept in mind that insurance is simply a contract and that the expressed intentions and agreements of the parties to that contract must be respected if not contrary to public policy. The insurance company is liable on its express undertakings in a contract. *Henshaw v. Mutual Safety Ins. Co.* (C. C. N. Y. 1848), 11 Fed. Cases 1189; 2 Blatchf. 99. The insurance company in these cases would be liable on its express undertakings in the blanket policy. We find, therefore, as the Main court properly said, that the blanket policy itself "constitutes the vitals of the controversy". That policy unquestionably

is a Michigan contract. It was made, delivered, and was to be performed at Detroit, Michigan. The contracting parties—Chrysler and the Insurance Company—were both residents of Michigan and were non-residents of Wisconsin and Maine. The automobile dealer in Wisconsin or Maine did not participate in the making or the execution or the performance of that contract. The blanket policy names as assured the “Chrysler Sales Corporation, of Detroit, Michigan, and/or for account of whom it may concern, as hereinafter specified.” The certificates signed and mailed from Detroit, Michigan, by the insurance company recite that under the blanket policy issued to Chrysler “covering for account of whom it may concern” the automobile sold or leased and delivered to the purchaser named in the certificate is insured against the hazards described in the blanket policy.

The certificate is a mere summary and recital of the provisions in the blanket policy, and there are no warranties by the purchaser. He is simply advised of the conditions precedent to recovery. The Maine court is in error when it states that the purchaser by accepting a certificate affirmatively makes warranties.

The issue of the certificate, according to the very terms of the blanket policy, is not essential to the effecting of the insurance. It is merely a memorandum to evidence something that had already sprung into existence before its issue.

There is a distinction between a certificate issued under the policy and the policy itself. *Diamond Alkali Export Company v. Bourgeois*, 3 K. B. Div. (1921), 443. In that case the vendor under contract of sale of goods tendered with the invoice for the sale of the goods a certifi-

cate of insurance issued under an open policy with the American Insurance Corporation, and the buyer refused to accept the same upon the ground that his contract called for a policy of insurance, and the certificate was not a policy. The court said (at page 455):

“I assume that this document (which is not stamped) was what is known as a floating policy issued by the insurance company to D. A. Horan. Now a certificate is not a policy. It does not purport to be a policy. \* \* \* It is a certificate that a policy was issued to D. A. Horan, and it incorporates the terms of that policy. \* \* \*”

and to the same effect see:

*Conner v. Manchester Assurance Co.* (C. C. A. 9), 130 Fed. 743.

Even though the dealer had been a contracting party to the insurance, that circumstance would not have subjected him to the regulatory statutes of Wisconsin. The dealer has the largest interest in an automobile at the time of its retail sale in at least eighty per cent. of the transactions. Most automobiles are sold on the deferred payment plan. The purchaser pays a small initial down payment in cash and gives his obligations to the dealer for his deferred installments. The dealer in most cases sells or discounts these obligations to a finance company or a bank and endorses and assigns the paper, generally guaranteeing its payment; sometimes, however, endorsing without recourse, according to his financing arrangements. If the dealer had himself taken out the blanket policy at Detroit, Michigan, instead of accepting the benefits of a contract already in existence between two non-residents, he would

have been well within his constitutional rights. Furthermore, he might have notified the Insurance Company before the risk attached from his place of business in Wisconsin or Maine to Detroit, Michigan, and he might have added the cost of insurance to the price of the cars which he sold. Such an arrangement would not have been unlike that made by Allgeyer in the case of *Allgeyer v. Louisiana*, 165 U. S. 578. In that case Allgeyer was doing business on a c. i. f. basis, when he sold the goods at a price under which he was obligated to provide the insurance and freight. The insurance there was primarily for the benefit of the purchasers of the cotton, but also operated for the benefit of the holders of the bills of exchange, just as the insurance in the present cases may be for the benefit of the purchasers of the automobiles, but also operates for the benefit of the dealers and the holders of the purchasers' instalment obligations.

In the present case, however, the position of the Chrysler dealer is even more secure than was that of Allgeyer. The insurance is not dependent upon any notice mailed or given by a dealer or upon any act done by him in the State of Wisconsin or Maine except the sale of the merchandise. In the Allgeyer case the risk attached upon the sale *and the report*, according to an arrangement made by Allgeyer and for which Allgeyer paid a premium, which premium he incorporated in the sale price of his merchandise. In the present case the insurance attaches upon the sale of the cars, not by reason of any arrangement made by the dealer, but by reason of an arrangement made by the dealer's vendor—Chrysler—who made the contract and pays the premium in a foreign state.

The dealer equally as well as Allgeyer is entitled to the guaranties and protection of the Federal Constitution in conducting his business as an automobile merchant.

**Insurance Company Is Not Doing Business in Wisconsin and Maine.**

The question whether the Palmetto Fire Insurance Company is doing business in Wisconsin and Maine has only an indirect bearing on whether the acts of the dealers subject them to the regulatory statutes governing insurance. Admittedly the insurance company was not licensed by the states to do business within those states. The dealers had no authority to bind the insurance company, did not presume to represent and in fact had no communication with it. The insurance company could not, therefore, be regarded as transacting business within the states so as to subject itself to liability for taxes or bring the insurance on Chrysler cars within the statutes.

*St. Louis Cotton Compress Co. v. Ark.*, 260 U. S. 346;

*Hunter v. Mut. Res. Life Ins. Co.*, 218 U. S. 573;

*Prov. Sav. & Life Ass. Soc. v. Kentucky*, 239 U. S. 103;

*State v. Int. Paper Co. (Vt.)*, 120 Atl. 900, 96 Vt. 506;

*Stone v. Old Colony Street Ry. Co. (Mass. 1912)*, 99 N. E. 218, 212 Mass. 459.

Nor would the acts of the dealers be sufficient to regard the insurance company as doing business within the states for purposes of service of process.

- Minnesota Commercial Men's Assn. v. Benn, 261 U. S. 140;  
 Peoples Tobacco Co. v. American Tobacco Co., 246 U. S. 79;  
 Pembleton v. Illinois Commercial Men's Assn. (Ill. 1919), 124 N. E. 355, 289 Ill. 99.

The dealers were independent merchants conducting their own business and although the insurance company might have been benefitted thereby that would not be doing business within the state nor constitute the dealers its agents.

- Allgeyer v. Louisiana, 165 U. S. 578;  
 Philadelphia & R. R. Co. v. McKibbin, 243 U. S. 264;  
 Rosenberg Bros. v. Curtis Brown, 260 U. S. 516.

There is no warrant either from the facts, the state statutes, or law generally to support the threatened acts of the Commissioners against the dealers as insurance agents.

### III.

**If the Wisconsin and Maine statutes should be so construed as to penalize the acts done by the Chrysler dealers in these cases, they would be unconstitutional to that extent.**

Whether or not the Wisconsin and Maine statutes, as applied to the facts in these cases, are unconstitutional depends upon whether these cases are to be distinguished from the principle laid down in *Allgeyer v. Louisiana*, 165 U. S. 578; *Minn. Commercial Men's Assn. v. Benn*, 261 U. S. 140; *Aetna Life Ins. Co. v. Dunken*, 266 U. S. 389; *New York Life Ins. Co. v. Head*, 234 U. S. 149, or whether they are

controlled by the holdings of this court in *Hooper v. California*, 155 U. S. 648; *Nutting v. Massachusetts*, 183 U. S. 553.

In *Hooper v. California*, 155 U. S. 648, Hooper was held to be the agent of both the insured and the unlicensed insurance company. Hooper in California delivered a policy to Mott and collected the premium which he (Hooper) transmitted to his principal at New York. In *Nutting v. Massachusetts*, 183 U. S. 553, a licensed broker solicited the insurance in Massachusetts, procured the policy and mailed it in Massachusetts to the assured.

In the cases now before this court the dealer does not deliver a policy nor does he collect or transmit a premium. He does no act whatsoever within the states of Wisconsin and Maine except to sell automobiles—the conduct of his own private business.

In fact the Chrysler dealers in Wisconsin and Maine do less than was done by *Allgeyer in Allgeyer v. Louisiana*—165 U. S. 578. The Chrysler dealers sell their own property—automobiles; Allgeyer sold his own property—cotton. The insurance is effective in respect to the automobiles sold under the Michigan blanket policy, regardless of anything the dealer might or might not do; the insurance was effective in the Allgeyer case when and only when Allgeyer mailed in Louisiana to the insurance company in New York a notice giving a description of the goods, amount desired in the shipment, name of the purchaser, and name of the vessel, etc. The contract of insurance under which Allgeyer's property was insured was made by Allgeyer in New York, while the policy in respect to which the Chrysler cars are covered was made by the dealers' vendor—Chrysler—at Detroit, Michigan. If the Chrysler dealers

had themselves contracted for the insurance at Detroit, Michigan, they would be more nearly within the Allgeyer case, but they even did less than did Allgeyer. As a matter of fact, they knew nothing of the insurance nor the negotiations leading up to the contracting for it until the insurance was announced by the Chrysler Sales Corporation at Detroit, Mich.

In the case of *Aetna Life Insurance Company v. Dunken*—266 U. S. 389, this court held a policy of life insurance to be a Tennessee and not a Texas contract. A term policy has been taken out in Tennessee and gave the option to the assured to change the policy to another form of insurance within a certain time upon paying the difference in premiums with interest. The Texas statute provided that a policy payable to a resident or inhabitant of Texas should be deemed a Texas contract. The assured moved to Texas and then elected to exercise his option. A new policy was mailed from Tennessee to him in Texas, and the Texas state court held it to be a Texas contract. This court reversed the state court and said 266 U. S. 389, at p. 399:

“The second policy here was issued in pursuance of, and was dependent for its existence and its terms upon, the express provisions of the contract contained in the first one. By those provisions, upon the simple application of the insured, the new policy must issue. Nothing was left to future agreement. The terms of the new policy were fixed when the original policy was made. In effect, it is as though the first policy had provided that, upon demand of the insured and payment of the stipulated increase in premiums, that policy should, automatically become a twenty-payment life commercial policy. It was issued not as the result of any new negotiation



or agreement, but in discharge of pre-existing obligations. It merely fulfilled promises then outstanding, and did not arise from new or additional promises. The result, in legal contemplations, was not a novation, but the consummation of an alternative specifically accorded by, and enforceable in virtue of, the original contract."

In the cases before this court, the automobiles are insured under a blanket policy executed, delivered and for which the premiums are paid at Detroit, Michigan. By the provisions of that contract, coverage exists irrespective of any other paper being sent out or anything being done other than the purchase of a car. The coverage does not arise by virtue of a contract made by the purchaser of a car or the dealer selling the car, but by reason of a contract made by a third party—Chrysler at Detroit, Michigan—for the benefit of "whom it may concern".

In the *Dunken* case the assured had to make an election in Texas and had to pay an additional premium there, and a new policy was mailed to him there. In these cases there is no election or option. The certificates which are sent out to the purchasers and other parties interested are unnecessary to the coverage. They are not insurance policies but merely are memorandums of information concerning the blanket policy. They are issued and mailed from Detroit, Michigan, in pursuance of and are dependent for their existence upon all the express provisions of a blanket policy previously made by the Chrysler Sales Corporation at Detroit, Michigan. By that policy nothing is left for future agreement by the retail purchasers. The terms of the certificate are fixed by the blanket policy. The certificates are not issued as a result of any new negotiations or

agreement but in discharge of the pre-existing obligations contained in the Michigan blanket policy. They merely fulfill promises then outstanding and do not arise from any new or additional promises. Accordingly as in the *Aetna Life Insurance Co. v. Dunken* case, the certificate is not a new contract and is not subject to the Wisconsin and Maine statutes, but is controlled entirely by Michigan law.

In the case of *Minnesota Commercial Men's Association v. Benn*, 261 U. S. 140, the policies which were mailed from Minnesota to the assured in Montana were Minnesota contracts, notwithstanding that the application for these policies had been solicited by members of the association in Montana, who made such solicitations in order to obtain prizes offered by the Association. They were not, however, authorized to bind the Association. This court held that the contracts were Minnesota contracts, and that the Association was not doing business in Montana. The Chrysler automobile dealers are not authorized to bind or act on behalf of the Palmetto Fire Insurance Company; they are not the agents for anyone. The dealers are their own principals in the sale of automobiles. It follows, therefore, that the Palmetto Fire Insurance Company is not doing business within the States of Wisconsin and Maine, and that the insurance coverage on the cars sold in Wisconsin and Maine is under the Michigan contract, and the laws of Wisconsin and Maine cannot be applied to the blanket policy, a Michigan contract, any more than the law of Missouri could be applied to the New York contract in the case of *New York Life Insurance Co. v. Head*, 234 U. S. 149; *New York Life Insurance Co. v. Dodge*, 246 U. S. 357. More in fact was done in those cases than in the cases now before this court. The applications for the loans were signed in

Missouri by the applicant; the policy (which had been taken out in Missouri and was a Missouri contract) was delivered as collateral for a loan in Missouri; the insurance company was licensed to do business in Missouri, and the balance of the premiums paid on the policy in connection with the loan transaction were paid in Missouri. Notwithstanding these facts the loan agreement was upheld as a New York contract.

There were no applications made in Wisconsin or Maine by the dealers or the purchasers. There are no policies delivered in those states. Nothing is done except the selling of a car, and then the coverage in respect to that car is automatic as in accordance with the provisions contained in the blanket policy executed and delivered and to be performed at Detroit, Mich. If the Wisconsin and Maine statutes can be construed to be so far-reaching as to penalize the dealers for selling cars as independent merchants because third parties in a foreign state have effected insurance in respect to them, it is submitted that under the authority of the decisions of this court, those statutes are to that extent void.

### **Burden on Interstate Commerce.**

The States of Wisconsin and Maine have no right or power to regulate the business of the Chrysler Sales Corporation, a foreign corporation, at Detroit, Michigan. Chrysler has the right to name its own price for the commodity sold by it in interstate commerce and to determine the elements that go to make up that price. The States of Wisconsin and Maine have no voice or control in what Chrysler may do with the proceeds of the sale of its own

products in interstate commerce. The States of Wisconsin and Maine have no authority to interfere with the constitutional right of Chrysler to make a contract of insurance, or otherwise, in a foreign state. The states have a right to regulate the acts of automobile dealers selling Chrysler cars within their jurisdiction, but this right cannot be used to accomplish a forbidden result. See

*Fidelity Deposit Co. of Maryland v. Tafoya* (Decided March 15, 1926; not yet officially reported but appearing in 46 Sup. Ct. Reporter 331).

The attempts of the States of Wisconsin and Maine through their Commissioners of Insurance to prevent the retail sale of Chrysler cars by dealers in those states, and because those dealers purchased the cars at wholesale in interstate commerce from Chrysler who had made a contract of insurance in respect to them is in effect an attempt by the states to place a burden on interstate commerce under the guise of regulating intrastate business. Freedom to sell intrastate of property purchased interstate is part of interstate commerce and arbitrary discriminatory interference with such freedom is an obstruction on interstate commerce. See:

*Dahnke-Walker Mill Co. v. Bondurant*, 257 U. S. 282, 290;

*Shafer v. Farmers Grain Co.*, 268 U. S. 189;

*Alpha Portland Cement Co. v. Massachusetts*, 268 U. S. 203;

*Leisy v. Hardin*, 135 U. S. 100;

*Lyng v. Michigan*, 135 U. S. 161;

*Sonneborn Bros. v. Cureton*, 262 U. S. 506, 513.

While insurance is not in itself a commodity, nevertheless when the cost of it has entered into the wholesale price in interstate commerce of the commodity, the attempt by the states to segregate a fraction of that wholesale price and to regulate it as a premium of insurance is an interference with the price itself and therefore a restraint on interstate commerce of the commodity. See:

*Thames & Mersey Ins. Co. v. U. S.*, 237 U. S. 19.

And the attempt by the states to prevent the sale of a commodity intrastate purchased by the retail dealer interstate because the wholesale vendor paid a premium of insurance to a non-admitted insurance company amounts to an arbitrary forcing of the insurance company to pay tribute to the state. See:

*St. Louis Cotton Compress Co. v. Arkansas*, 260 U. S. 346.

The Chrysler automobile dealers in Wisconsin and Maine as independent merchants have a right to purchase automobiles in interstate commerce and a right to sell the cars intrastate; their business is legitimate and useful and while subject to reasonable regulation by the states, nevertheless cannot be arbitrarily interfered with. See:

*Weaver v. Palmer Bros. Co.* (Decided March 8, 1926; not yet officially reported but appearing in 46 Sup. Ct. Reporter 320).

### Conclusion.

The insurance plan inaugurated by Chrysler Sales Corporation under its blanket policy with the Palmetto Fire Insurance Company was an economic and legal device to meet the needs of the automobile industry and to correct abuses in the marketing of automobiles. It is eminently sound.

See:

Yale Law Journal, June 1926, Vol. 35, pages 989, 997; University of Pennsylvania Law Review, March 1926, Vol. 74, page 491.

The dealers as such did not participate in the originating or in the operation of the plan, and in fact knew nothing about it until it was announced. As independent merchants they merely bought goods at wholesale and sold them at retail. In conducting their legitimate business they did not violate any of the state insurance statutes, and if these statutes should be construed as applicable to the business of the automobile dealers, they are to that extent unconstitutional and void.

At the argument of the case in the lower courts, it was urged that the insurance plan "evaded" the state statutes. Such an argument should be given no weight, as it has no bearing upon the questions in the case. If the statutes are not being violated, they are not being "evaded". It has been recognized by this court that it is proper for a person in the exercise of his federal constitutional rights to make contracts that do not violate and are beyond the jurisdiction of the state statutes. In St.

*Louis Cotton Compress Company v. Arkansas*, 260 U. S. 346, this court in its opinion said that the policy was taken out in Missouri "because the rates were less than those charged by companies authorized to do business in Arkansas". It might be urged that the rate laws of Arkansas were "evaded" by the making of a Missouri contract insuring Arkansas risks. Admittedly also, in *New York Life Insurance Co. v. Head*, 234 U. S. 149, and *New York Life Insurance Co. v. Dodge*, 246 U. S. 357, the loan agreements in these cases were so formulated as to make them New York contracts and thus render unnecessary compliance with the Missouri statutes. It has always been recognized that when alleged state rights come into conflict with Federal constitutional rights, the alleged state rights must yield.

It is submitted that the interlocutory decrees of the courts below should be reversed and interlocutory injunctions allowed pending a final hearing.

Respectfully,

DUANE R. DILLS,  
Counsel for Plaintiffs-Appellants.

DILLS & TOWSLEY, Attorneys,  
100 East 42d Street,  
New York City.

## APPENDIX.

### A.

#### Wisconsin Statutes Cited in Brief.

**203.07 Unauthorized insurance void.** 1. All future contracts of insurance against the risk of loss or damage by fire or lightning upon property in this state shall be held to be made and effected within this state.

2. No unauthorized fire insurance company or other unauthorized insurer shall hereafter make or issue, directly or indirectly, any policy of insurance on property in this state, except as specifically authorized by law. All such contracts are declared to be unlawful, void, and unenforceable, and no action in law or equity shall be maintained on any such contract in any court.

**201.41 Fees; conditions; revocation of license.** 1. No insurance corporation shall transact any insurance business in this state without first having paid the license fees and obtained the license therefor as required by law.

2. (a) If any such corporation shall remove or make application to remove into any court of the United States any action or proceeding commenced in any court of this state upon a claim or cause of action arising out of any business or transaction done in this state; or (b) if it shall violate or fail to comply with any provision of law applicable thereto; or (c) in case its capital shall be impaired to the extent of twenty per cent and shall not be made good within such time as the commissioner of insurance shall require, according to law; (d) it shall be the imperative duty of the commissioner to revoke any and every authority, license or certificate granted to such corporation or any agent thereof to transact any business in this state, and no



such corporation or agent thereof shall thereafter transact any business of insurance in this state until again duly licensed.

3. In case such revocation shall be made because of the removal of any action to any court of the United States no renewal, license or certificate of authority shall be granted to such corporation for three years after such revocation.

4. Whenever any such license shall be revoked the commissioner shall give notice of such revocation by mail to every agent of such corporation who shall have obtained any certificate of authority therefor and shall also publish notice thereof in the official state paper.

5. If an insurance company shall hold a certificate of authority to transact more than one kind of insurance, the commissioner shall have power to annul or revoke such certificate as to one or more kinds of insurance authorized therein for the same cause and in the same manner that he is authorized to annul or revoke such certificate for all kinds of insurance authorized therein.

**201.44 Agents to be residents; exceptions; penalty.**

1. No policy of insurance shall be issued or delivered in this state by any company, except through an agent who shall be a resident of this state and hold a certificate of authority under section 209.04, for the kind of insurance effected by such policy.

2. In case of fire insurance, the agent shall countersign and enter the policy in a permanent record to be kept by him for that purpose. Such agent shall be paid the commission on the policy.

3. The books of every person transacting or purporting to transact the business of an insurance agent shall at all times be open to the inspection of the commissioner of insurance, his deputy or examiners, and a refusal to permit

such inspection shall be prima facie evidence of a violation of this section.

4. This section shall not prevent any insurance placed in violation thereof taking effect.

5. Any company or person soliciting or placing insurance without complying with this section, shall, in addition to other penalties provided by law, be liable personally upon such policy or contract of insurance to the same extent as the company issuing the same.

6. This section shall not apply to:

(a) Policies issued directly from the home office of any company organized under the laws of this state.

(b) Policies covering property in transit while in the possession or custody of any common carrier, or the rolling stock or other property of any common carrier used and employed by it as a common carrier of freight or passengers.

(c) Policies issued directly, by any mutual company or any association doing business on the inter-insurance or reciprocal plan, on which no commissions are paid, except to a home office manager or an attorney in fact for such company or association, as specifically authorized by the insured.

7. Any company or agent violating this section shall be subject to the penalty provided by subsection 5, of section 207.01.

**209.04 Agent's licenses; exceptions.** 1. No person, officer, or broker, agent or sub-agent of any insurance corporation of any kind required to pay any tax or license fee to the state shall act or aid in any manner in transacting the business of or with such corporation in placing risks or in collecting any premiums or assessments or effecting insurance therein, without first procuring from the insur-

ance corporation a certificate of authority; nor shall any such person, officer, broker, agent or sub-agent, after such certificate shall have expired, or after revocation by the commissioner of insurance of such certificate or of the license of such corporation and until a new certificate or license shall have been issued to him, do or perform any such act for or in behalf of any insurance corporation. \* \* \*

\* \* \* \* \*

4. Any person violating the provisions of this section shall be punished by a fine of not more than five hundred dollars for each offense. Any company violating subsection (2) of this section shall pay five times the amount of fees upon each license included in such violation.

**209.05 Who are agents.** Every person or member of a firm or corporation who solicits insurance on behalf of any insurance corporation or person desiring insurance of any kind, or transmits an application for a policy of insurance, other than for himself, to or from any such corporation, or who makes any contract for insurance, or collects any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance corporation, or advertises to do any such thing, shall be held to be an agent of such corporation to all intents and purposes, unless it can be shown that he receives no compensation for such services. This section shall not apply to agents of licensed fraternal beneficiary societies, or mutual fire insurance companies of this state except those organized under sections 201.02, 201.04 and 201.16.

**348.488 Penalty for unauthorized insurance.** Any unauthorized insurance company or other unauthorized insurer which shall hereafter take or receive any application for insurance in this state, or shall receive or collect a premium on any part thereof for such insurance, shall be punished by a fine of not more than five thousand dollars.

Any officer, agent, solicitor, or broker, or other employe of any unauthorized insurance company or other unauthorized insurer who shall take or receive any application for insurance in this state, or shall receive or collect a premium or any part thereof for such insurance, shall be guilty of a felony, and shall be punished by a fine of not more than five hundred dollars, or imprisonment in the state penitentiary for one year, or by both such fine and imprisonment.

## B.

### Other Wisconsin Statutes.

**76.33 Fire companies; license fees, reports.** Any company not authorized to do business in this state, which shall transact an insurance business in this state shall pay to this state a tax computed upon the same basis as prescribed in this chapter for authorized insurance companies doing the same kind of business, and on default of any such company in the payment of such tax before the first day of March next succeeding, the insured shall pay such tax. Every person paying more than one hundred dollars premiums to any one such company in any year shall report the same in writing by mail to the commissioner of insurance before the first day of March next succeeding, and if such report be not made and such tax remains unpaid for sixty days after the said first day of March, the tax shall be increased by one-tenth for every month during which such tax remains unpaid after the expiration of said sixty days.

### **201.38 Foreign companies; conditions of admission.**

1. No company incorporated under the laws of any other state or of any territory or of any foreign government or other insurer having its home office outside of this state shall, directly or indirectly, take risks or transact any business of insurance in this state except upon compliance with and maintenance of the following requirements:

2. (a) Any such company or other insurer shall first file a written instrument, duly executed, declaring that it desires to transact the business of insurance in this state and that it will accept a license therefor according to the laws of this state, which shall cease and terminate in case such insurer shall remove or make application to remove into any court of the United States any action or proceeding commenced in any court of this state upon a claim or cause of action arising out of any business or transaction done therein, or in case it shall violate or fail to comply with any provision of law applicable to such insurer, or in case its capital shall be impaired to the extent of twenty per cent, and shall not be made good within such time as the commissioner of insurance shall require, if such commissioner shall, in either case declare its license revoked therefor. \* \* \*

(b) Such insurer shall also appoint, in writing, the commissioner of insurance and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it may be served, and in such writing shall agree that any legal process against it which is served on said attorney shall be of the same legal force and validity as if served on the insurer, and that such authority shall continue in force so long as there is any liability outstanding against the insurer in this state whether the license of such insurer to do business in this state shall remain in force or shall be revoked or otherwise terminated. A copy of such writing, duly certified, shall be filed in the office of the commissioner, and copies certified by him shall be deemed sufficient evidence thereof.

(c) Service upon such attorney shall be deemed sufficient service for all purposes upon the principal, and shall be as effectual for all purposes as though made upon a corporation or other insurer existing under the laws of this state. The service of such process shall be made by leaving

duplicate copies thereof in the hands or office of the commissioner of insurance and paying to him for the use of the state a fee of two dollars. A certificate by the commissioner of insurance showing such service and attached to the original or a third copy of such process presented to him for that purpose shall be sufficient evidence thereof.

**203.08 Violation of law; bound by contract.** Any insurance company, its officers or agents or either of them, violating any provision of sections 203.01 and 203.02 to 203.08, inclusive, by making, issuing, delivering or offering to deliver any policy of fire insurance on property in this state, except as hereinbefore provided, shall be guilty of a misdemeanor and upon complaint made by the commissioner of insurance or any citizen of this state shall, upon conviction thereof, be punished by a fine of not less than fifty dollars nor more than one hundred dollars for the first offense, and of not less than one hundred dollars nor more than two hundred and fifty dollars for each subsequent offense; but any policy so made, issued and delivered shall, nevertheless, be binding upon the company issuing the same, and such company shall thereafter be disqualified from doing any insurance business in this state.

**209.11 All insurers to comply with law.** No corporation, association, partnership or individual shall do any business of insurance of any kind, or make any guaranty, contract or pledge for the payment of annuities or endowments or money to the families or representatives of any policy or certificate holder, or the like, in this state or with any resident of this state except according to the conditions and restrictions of these statutes. And the term insurance corporation as used in this chapter may be taken to embrace every corporation, association, partnership or individual engaging in any such business.

## C.

**Maine Statutes Cited in Brief.**

**Chap. 53, Sec. 121. (As amended by P. L. 1917, Chap. 25). Licenses to agents; agent personally liable for unlawful contracts.** The insurance commissioner may issue a license to any person to act as an agent of a domestic insurance company, upon his filing with the commissioner a certificate from the company or association, or its authorized agent, empowering him so to act; and to any resident of the state to act as an agent of any foreign insurance company, which has received a license to do business in the state as provided in section one hundred and five or section one hundred and fifty, upon his filing such certificate. Such license shall continue until the first day of the next July. If any person solicits, receives or forwards any risk or application for insurance to any company, without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums, he shall be punished by a fine not exceeding two hundred dollars, or imprisonment not exceeding sixty days for each offense; but any policy issued on such application binds the company if otherwise valid. Agents of duly authorized insurance companies may place risks with agents of other duly authorized companies when necessary for the adequate insurance of property, persons or interests. An insurance agent shall be personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for or in behalf of any company not authorized to do business in the state. Nothing herein contained shall require a duly licensed insurance agent or broker to obtain any license for an employee doing only clerical office work in the office of said agent or broker.

**Sec. 122. (As amended by P. L. 1917, Chap. 25). Commissioner may license insurance brokers; penalty for acting**

**without license; may revoke license for cause or upon request of company.** The insurance commissioner may license any person as broker to negotiate contracts of insurance for others than himself for a compensation, by virtue of which license he may effect insurance with any domestic company or its agents; or any resident of the state to negotiate such contracts and effect insurance with the agents of any foreign company who have been licensed to do business in this state as provided in sections one hundred and five and one hundred and twenty-one, but with no others; said license shall remain in force one year unless revoked as hereinafter provided. Whoever, without such license, assumes to act as such broker, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not more than sixty days for each offense. The insurance commissioner, after reasonable notice, may revoke the license of any agent or broker for violation of the insurance laws; or the license of any agent upon receipt of written request therefor from the company filed in the office of said commissioner.

## D.

### Other Maine Statutes.

**Sec. 129. Discrimination or rebate on premiums for fire or liability insurance declared unlawful.** No insurance company transacting fire or liability insurance in this state, and no agent or broker transacting fire or liability insurance, either personally or by any other party, shall offer, promise, allow, give, set-off or pay, directly or indirectly, as an inducement to fire or liability insurance on any risk in this state, now or hereafter to be written, any rebate of or part of the premium payable on any policy or of the agent's commission thereon; nor shall any such company, agent or broker, personally or otherwise, offer, promise, allow, give,



set-off or pay, directly or indirectly, as an inducement to such fire or liability insurance any earning, profit, dividends or other benefit, founded, arising, accruing or to accrue on such insurance, or therefrom, or other valuable consideration, or any special favor which is not specified, promised or provided for in the policy of insurance; nor shall any such company, agent or broker, personally or otherwise, offer, promise, give or sell as an inducement to such insurance any stocks, bonds, securities or property, or any dividends or profits accruing or to accrue thereon, nor, except as specified in the policy, offer, promise or give any other thing of value whatsoever, or purchase any stocks, bonds, securities or other property, for which shall be paid or agreed to be paid more than the fair and reasonable value thereof.

**Chap. 9, Sec. 57. Taxation of business done with unauthorized companies; rate; exception.** All persons, companies, associations or corporations, residing or doing business in this state, that enter into any agreements with an insurance company, association, individual, firm, underwriter or Lloyd, not authorized to do business in this state, whereby said person, company, association or corporation shall enter into contracts of insurance against loss or damage by fire or lightning covering risks or property within this state, with said unauthorized association, individual, firm, underwriter or Lloyd, for which a premium is charged or collected, shall, annually on the first day of December or within ten days thereafter, return to the insurance commissioner of this state a statement under oath for the twelve months preceding on policies or contracts of insurance or indemnity taken by the said person, company, association or corporation. Such statement shall show the amount of insurance and the gross premiums paid to each stock company for insurance during the period covered by such statement, and there may be deducted from the gross premiums any premiums returned to the insured on policies cancelled

where such policies have been issued during the term covered by the statement or premiums returned on policies cancelled where such original premiums have been previously taxed under this section; or if the insurance or indemnity is with a mutual company or association or individual or through an attorney for individuals, partnerships or corporations, or firm or Lloyds, such statement shall show the amount of insurance or indemnity and gross premium or deposit or payment made to secure such insurance or indemnity and from said gross premium or deposit or payment there may be deducted any premiums returned to the insured on policies cancelled where such policies have been issued during the term covered by the statement or premiums returned on policies cancelled where such original premiums have been previously taxed under this section. The insurance commissioner shall give notice to each person, company, association or corporation filing such return of the amount of his tax, computed at two and one-half per cent of the gross premium or deposit or payment made to secure the insurance or indemnity and said tax shall be payable to the treasurer of the state on or before the thirty-first day of December following; provided, however, that this section shall not be construed as extending to fraternal beneficiary associations, or members thereof; nor to mutual church insurance companies conducted for the protection of properties used in the service of religious denominations, or members thereof; nor to marine insurance; nor shall any provision of this section be construed as extending to insurance in unauthorized companies, written by special insurance brokers, under section one hundred twenty-five, of chapter fifty-three.

## E.

**Palmetto Fire Ins. Co. v. Beha, decision on rehearing not yet reported, July 14, 1926, United States Statutory Court for Southern District of N. Y.**

UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF NEW YORK.

PALMETTO FIRE INSURANCE COMPANY,  
Plaintiff,

*against*

JAMES A. BEHA, as Superintendent of  
Insurance of the State of New York,  
Defendant.

Before: ROGERS, C.J., and HAND and KNOX, D.J.J.

CABELL, IGNATIUS & LOWN, Solicitors for Plaintiff;  
HARTWELL CABELL, Counsel.

ALBERT OTTINGER, Attorney-General of the State of  
New York, for the Defendant; CLAUDE T. DAWES  
and JOSEPH C. H. FLYNN, Deputies Attorney-Gen-  
eral and CLARENCE C. FOWLER, Special Deputy  
Attorney-General.

AUGUSTUS N. HAND, District Judge:

After a re-argument of this case, we are not satisfied that our former decision was erroneous. Insurance may be taken out for whom it may concern. This has been common enough in marine risks, *Hagan v. Scottish Union Ins. Co.*, 186 U. S. 423. The doctrine has been extended to inland fire risks, (*Marqusee v. Hartford Fire Ins. Co.*, 198

Fed. 475), though the English Courts do not seem to have gone this far. *Grover v. Matthews*, (1910) 2 K. B. 401. It has been further applied to contracts for insurance on anticipated risks. *Hooper v. Robinson*, 98 U. S. 528; *Hoffman v. Aetna Ins. Co.*, 32 N. Y. 405; also opinion of Judge Betts in *Hanshaw v. Mutual Safety Ins. Co.*, Fed. Cas. No. 6387.

In the present case the purchasers of Chrysler cars could have had no insurable interest at the time the contract was made with the Palmetto Company in Michigan. Their interest would come into being whenever they might purchase cars and thereby come within the arrangement for insurance involved in the transaction. The question is whether the dealer by explaining the transaction to the purchaser forwarding his name with the amount paid for the car, in which the insurance premium had been taken into account in the charge, was effecting or procuring insurance in this State within the meaning of the statute. Under the decision of *Lumbermen's Mutual Co. v. Meyer*, 197 U. S. 407, it may be that the Palmetto Co. in adjusting losses will be doing business in the State of New York for the purpose of service of process and taxation, but no such course of business has been shown to have occurred. It is going farther, however, to say that the retailer is the agent of a company which neither directs nor pays him, nor has anything to do with him. The question is one of the construction of the New York Statute than of constitutional law, and we hold that the fact of acquiescence by the purchasers of Chrysler cars in a contract of sale which *ipso facto* gives them insurance protection under an agreement made in Michigan between the Chrysler Company and the plaintiff does not involve an effecting or procuring of insurance within the State of New York. The contract here may be construed as made in a foreign state for the benefit of a third party. It may be that the state could provide as a condition of obtaining a license that no licensee could insure

cars within the State of New York, but the statute does not cover such a case.

We adhere to our original decision. Judge Rogers because of illness has taken no part in this decision, though he presided at the time of the re-argument.

July 14, 1926.

AUGUSTUS N. HAND,  
JNO. C. KNOX,  
D.J.J.

**F.**

**Bristol & Co. v. Railroad Commission of Wisconsin, not yet reported, Circuit Court for Dane County, decision of Hoppmann, J., July 19, 1926.**

STATE OF WISCONSIN,  
IN CIRCUIT COURT—FOR DANE COUNTY.

BRISTOL & Co.,  
Plaintiff,

*vs.*

RAILROAD COMMISSION OF WISCONSIN,  
Defendant.

(Case No. 1)

The above entitled action was tried to the Court without a jury. The plaintiff appeared by Richmond, Jackman, Wilkie & Toebaas, his attorneys; and the defendant appeared by T. L. McIntosh, representing the attorney

general of Wisconsin. After hearing the evidence and arguments of counsel, the Court makes the following as the findings of facts, conclusions of law, and orders to-wit:

### **Findings of Facts.**

No. 1. That the plaintiff, Fred C. Bristol is an individual doing business under the name of "Bristol & Company", in the City of Chicago, Illinois, and is a resident of the State of Illinois.

No. 2. That the Kankakee Hostelry Company, an Illinois Corporation, executed a bond issue of \$250,000 par value, on property located at Kankakee, Illinois. That the plaintiff underwrote all of said issue.

No. 3. That the principal and interest of approximately \$115,000 of said issue was guaranteed by the *United Lloyds of America*. And that approximately \$110,000 of said issue was so guaranteed by the FEDERAL SURETY COMPANY. That said contracts of guarantee were all fully executed and delivered in the State of Illinois.

No. 4. That neither said UNITED LLOYDS OF AMERICA nor said FEDERAL SURETY COMPANY are licensed to do a surety business in the State of Wisconsin.

No. 5. That plaintiff paid the premium on said guarantee in the State of Illinois. That all future premiums on said guarantee are payable in the State of Illinois.

No. 6. That the plaintiff made an absolute sale of the bonds in question in this action, in the State of Illinois to the Guaranteed Bond Company, located in Milwaukee, Wisconsin. That in effecting such sale neither the plaintiff nor the Guaranteed Bond Company, acted as the agent of either said UNITED LLOYDS OF AMERICA or said FEDERAL SURETY COMPANY. That each acted on their own behalf.

No. 7. That said Guaranteed Bond Company sold to citizens of the State of Wisconsin, approximately \$17,700, par value, of said bonds, which were so guaranteed by the UNITED LLOYDS OF AMERICA. That said Guaranteed Bond Company sold to citizens of Wisconsin, approximately \$97,300, par value, of said bonds which were so guaranteed by the said FEDERAL SURETY COMPANY. That in the sale of said bonds in Wisconsin neither the said Guaranteed Bond Company nor its agents or salesmen acted in any manner for or on behalf of said UNITED LLOYDS OF AMERICA or said FEDERAL SURETY COMPANY.

No. 8. That on the 17th day of November, 1925 the plaintiff applied to the defendant for a permit to sell said bonds in Wisconsin. That the defendant entered an order denying said application on the 17th day of February, 1926.

### Conclusions of Law.

No. 1. That the sale and delivery, by said Guaranteed Bond Company, of said bonds in the State of Wisconsin including said guarantee does not constitute the doing of a guarantee or suretyship business in Wisconsin on the part of the said UNITED LLOYDS OF AMERICA or said FEDERAL SURETY COMPANY.

No. 2. That the order of the defendant dated the 17th day of February, 1926 denying to the plaintiff a permit to sell said bonds in Wisconsin for the reason stated in said order is in violation of law and void.

#### IT IS THEREFORE HEREBY ORDERED :

No. 1. That said order be and the same hereby is vacated and set aside as for naught.

No. 2. That the whole record in the above entitled action is hereby remanded to the defendant and that said

defendant issue the said permit applied for unless, said permit shall be denied by the defendant for reasons other than the basis upon which said permit was denied by the defendant, on the 17th day of February, 1926.

Dated July 19, 1926,

By the Court:

AUGUST C. HOPPMANN,  
Judge.



(6)

U. S. Supreme Court, U.  
FILED

OCT 11 1926

**Supreme Court of the United States**

**October Term, 1926**

**Case No. 273.**

**CHEVSELER SALES CORPORATION,**

*Plaintiff-Appellant,*

**WILBUR D. SPENCER, as Commissioner of Insurance of the  
State of Maine,**

*Defendant-Appellee.*

**Case No. 274.**

**UTTERBACK-GLEASON COMPANY,**

*Plaintiff-Appellant,*

**WILBUR D. SPENCER, as Commissioner of Insurance of the  
State of Maine,**

*Defendant-Appellee.*

**Case No. 285.**

**CLARK MOTOR COMPANY,**

*Plaintiff-Appellant,*

**W. STANLEY SMITH, as Commissioner of Insurance of the  
State of Wisconsin,**

*Defendant-Appellee.*

**Case No. 287.**

**CHEVSELER SALES CORPORATION,**

*Plaintiff-Appellant,*

**W. STANLEY SMITH, as Commissioner of Insurance of the  
State of Wisconsin,**

*Defendant-Appellee.*

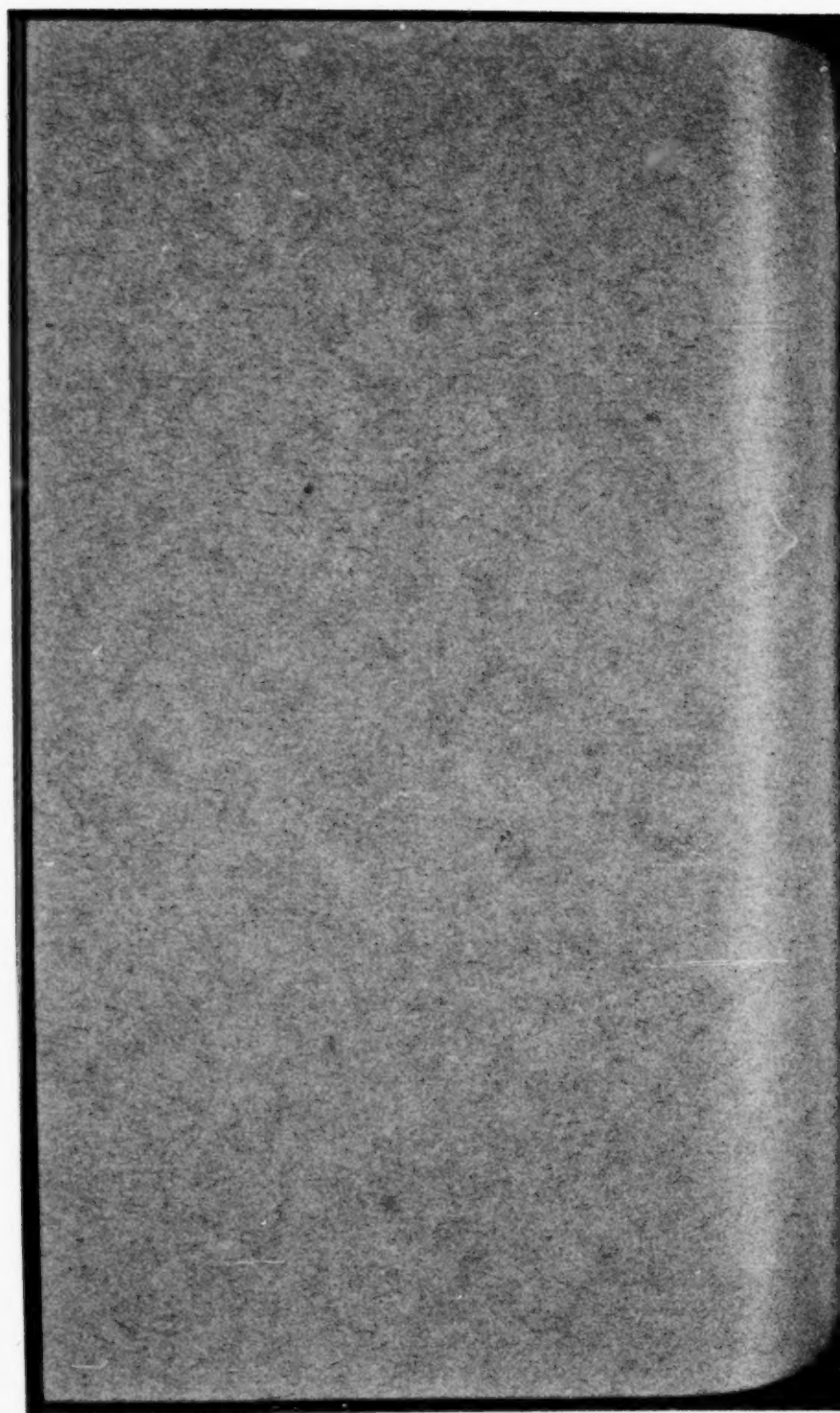
**ON DIRECT APPEAL FROM THE STATUTORY COURTS—UNITED  
STATES DISTRICT COURT, WESTERN DISTRICT OF WISCONSIN  
AND UNITED STATES DISTRICT COURT, DISTRICT OF MAINE,  
SOUTHERN DIVISION.**

**SUPPLEMENT TO  
BRIEF FOR APPELLANTS  
(Plaintiffs Below.)**

**Additional Authorities on Jurisdiction.**

**DUANE B. DILL,**

*Counsel for Plaintiffs-Appellants.*



## QUESTION OF JURISDICTION.

In Cases No. 273 and 274, the Attorney General of Maine in his brief, at pages 5 and 6, relies particularly upon the case of *Fitz v. McGhee*, 172 U. S. 516, to show that this court has no jurisdiction in the cases at bar, and that the suit is one against the state. In Cases Nos. 286 and 287, the Attorney General of Wisconsin in his brief, at page 48, also relies upon the said case of *Fitz v. McGhee* to show that this court has no jurisdiction.

The Attorneys General of Maine and Wisconsin apparently overlooked the discussion of the case of *Fitz v. McGhee* in the later case of *Ex Parte Young*, 209 U. S. 123, at page 156. Mr. Justice Peckam in that case points out that in *Fitz v. McGhee* the penalties were to be collected from individuals paying an excess bridge toll over that prescribed by the state statute. They were therefore private suits in which the state officials were not concerned. The state statute could not be tested by an injunction against the state officers, because they were not parties to the threatened actions against the petitioners. The indictments in that case were under a different statute from the alleged unconstitutional statute fixing the toll rates. The constitutionality of the penal statute was not questioned, and therefore had no relation to the case. In *Ex Parte Young* Mr. Justice Harlan dissented. He wrote the opinion in *Fitz v. McGhee*.

Since writing our brief and giving authorities for the jurisdiction of this court on pages 4 and 5, we have also found other cases which if the court wishes to consider the matter further might be of help.

*Greene v. Louisville & I. R. Co.*, 244 U. S. 499, holds that the state officer to be enjoined need have only a relation to the enforcement of the alleged unconstitutional statute and need not be the specific officer charged with bringing the actions under that statute; that the suit against such state officer is not a suit against the state, following *Ex Parte Young*; and that the jurisdiction includes all questions of state law irrespective of what disposition might be made of the federal question, or whether it might be necessary to decide the federal question at all. To the same effect see *Risty v. C. R. I. & P. Ry. Co.* (C. C. A. 8), 1924—297 Fed. 710, at page 722.

*Siler, et al. v. Louisville & Nashville R. Co.*, 213 U. S. 175, in which case there was no diversity of citizenship, but the court held jurisdiction on the ground that the statute was alleged to deprive the complainant of property without due process of law, and denied the complainant equal protection of the laws. The court held at page 191 that the federal questions having been raised, it could retain jurisdiction to determine the state questions.

To the same effect see also *La. P. S. Com. v. M. L., etc. Co.*, 264 U. S. 393, at page 395; *Hebe Co. v. Shaw*, 248 U. S. 297. For further authorities see *Weyman-Bruton Co. v. Ladd* (C. C. A. 8), 231 Fed. 898, holding that injunctions were proper against criminal prosecutions threatened to be brought under an alleged unconstitutional statute. See also *Carolene Products Co. v. Mahoney* (D. C. Mass.), 294 Fed. 902; affirmed (C. C. A. 1) 2 Fed. (2) 366; *Royal Baking Powder Co. v. Emerson* (C. C. A. 8), 270 Fed. 429; *Benedicto, Treasurer v. Porto Rican-American Tobacco Co.* (C. C. A. 1), 256 Fed. 422; *Mutual Life Insurance Co. v. Boyle* (C. C. Kans.), 82 Fed. 705.

The cases decided by the Supreme Court of Wisconsin which would bear out the same propositions of law are—

*Sperry & Hutchinson Co. v. Weigle*, 169 Wis. 562;

*State ex rel. v. W. Stanley Smith, Insurance Commissioner*, 184 Wis. 455.

Respectfully,

DUANE R. DILLS,  
*Counsel.*



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Office Supreme Court, U. S.  
**FILED**

OCT 1 1926

W. R. STANSBURY  
CLERK

**Supreme Court of the United States**

**Utterback-Gleason Company,**  
Appellant

vs.

**No. 274**

**Wilbur D. Spencer,**  
Insurance Commissioner of the State of Maine  
Appellee.

October Term 1925      No. 904.      Filed January 21, 1926

---

**Chrysler Sales Corporation,**  
Appellant

vs.

**No. 273**

**Wilbur D. Spencer,**  
Insurance Commissioner of the State of Maine,  
Appellee.

October Term 1926      No. 273.      Filed January 21, 1926.

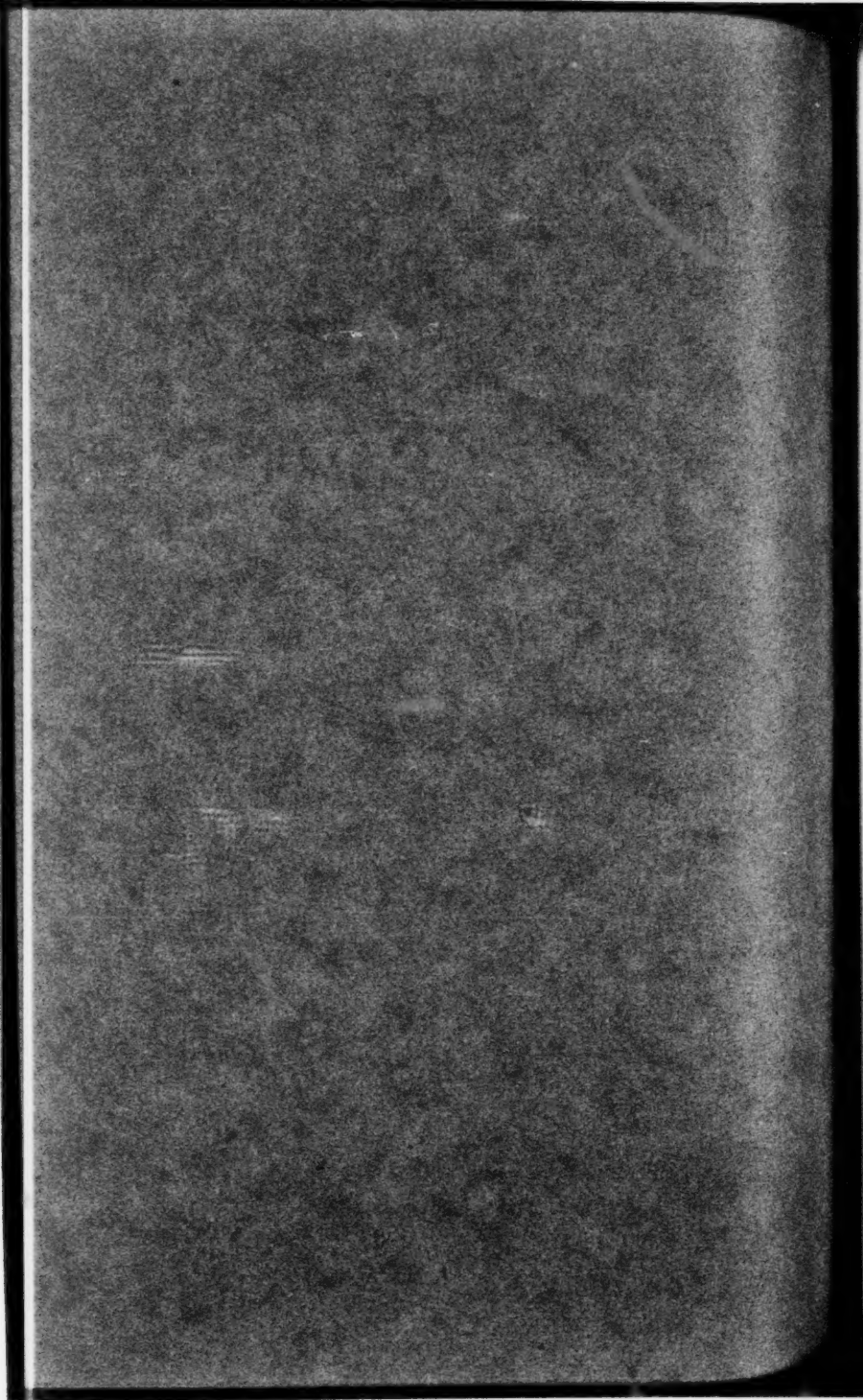
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Appeal from the District Court of the United States  
for the District of Maine

**BRIEF OF DEFENDANT,**  
**APPELLEE WILBUR D. SPENCER**

Attorneys:

**RAYMOND FELLOWS, Attorney General of Maine**  
**J. F. GOULD**





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**APPELLEE WILBUR D. SPENCER**

**Attorneys:**

**RAYMOND FELLOWS, Attorney General of Maine**  
**J. F. GOULD**



These two bills in equity ask for temporary and permanent injunction restraining the Insurance Commissioner of the State of Maine from enforcing or attempting to enforce the insurance laws of the State, which forbid the soliciting, receiving or forwarding of any risk or application for insurance by one not a licensed agent.

For opinion of court below, dated December 19, 1925, see Record page 35 and 36.

In the first bill, jurisdiction of the Court is claimed on the ground that the plaintiff, Chrysler Sales Corporation, is a citizen of the State of Michigan and in the other that the action arises under the Constitution and laws of the United States,—the plaintiff, Utterback-Gleason Company, being a Maine corporation engaged in selling automobiles as a dealer for the Chrysler Corporation.

Briefly the facts are these: The Chrysler Sales Corporation sells Chrysler automobiles to distributors and dealers. These automobiles are covered by a blanket fire and theft insurance policy issued by the Palmetto Fire Insurance Company, which company is not licensed to do business in Maine. This policy of insurance purports to cover against loss by fire or theft for a period of one year all Chrysler cars sold by the retail dealer. The retail dealer reports to the Chrysler Sales Corporation the name of the purchaser of the automobile, date of sale, motor number, style, etc., and the Sales Corporation notifies the Palmetto Company, whereby the purchaser becomes protected under the original policy. The defendant, as Insurance Commissioner, has ruled that the dealer, not being a licensed insurance agent, is violating the statutes of Maine which provide that "if any person solicits, receives or forwards any risk or application for insurance to any company, without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums he shall be punished, etc." This opinion of the Commissioner was based on the

ground that the Chrysler dealer "solicits, receives and forwards" the risk, and by accepting the price of the car which is made up in part of the insurance premium, "procures risks and receives money for premiums". In other words, there are several distinct violations of the resident agency insurance laws of Maine.

Revised Statutes of Maine,

Chapter 53, Sections 121, 123, 124, 129.

Under this "master policy", the dealer sells cars and insurance at one stroke. Without the dealer the insurance would not and could not be effected. The insurance is a part and advertised as a part of the contract of sale. The insurance premium is admittedly included in and is a part of the final and ultimate purchase price paid by the purchaser.

The contract of insurance evades the laws of the State of Maine which were enacted for the purpose of supervising, regulating and taxing the business of insurance. The contract also allows the unauthorized Palmetto Company to escape the safeguards and restrictions imposed by the Maine laws upon companies authorized to do business in this State.

## JURISDICTION

The State of Maine feels that it is in duty bound to respectfully point out to the Court what it believes to be its constitutional and sovereign rights, for the reason that it must do all in its power to protect its own citizens.

A Federal Court always presumes that it is without jurisdiction until the contrary affirmatively appears.

Danks v. Gordon, 272 Fed. 821.

Mattingly v. Northwestern V. R. Co.

158 U. S. 53.

It is the sovereign right and duty of the State of Maine to regulate the business of insurance, as it affects the wealth, health, comfort and prosperity of its people, and is not commerce.

- Paul v. Virginia, 75 U. S. (8 Wall.) 168.  
 Mer. Mut. Lia. Ins. Co. v. Smart, 267 U. S. 127.  
 Nutting v. Mass., 183 Mass. 553.  
 Allegeyer v. Louisiana, 165 U. S. 578.  
 N. Y. Life Ins. Co. v. Deer Lodge County,  
     231 U. S. 495.  
 German Alliance Ins. Co. v. Lewis,  
     233 U. S. 389.

These suits in equity are brought against the State itself, and it is a fundamental rule of law that neither a sovereign nor its public officers, as such, can be sued in its own courts, or in any other Courts, except where consent and permission so to do has been given by express Legislative Enactment.

- Briggs v Light Boats, 93 Mass. 162, 175.  
 Beers v. State of Arkansas,  
     20 How. (U. S.) 527, 529.  
 Murray v. Wilson Distilling Co.  
     213 U. S. 151.  
 Smith v. Reeves, 178 U. S. 436,  
 Louisiana v. McAdoo, 234 U. S. 627.  
 See also Chisholm v. Georgia, 2 Dallas 419, which decision was abrogated by the Eleventh Amendment.

The insurance laws of Maine have established an Insurance Department and placed the same under the charge of a Commissioner with power to grant and revoke licenses to companies and agents in his judgment. He is not specially charged with the duty of enforcing the criminal insurance laws, for this duty is for the sixteen county attorneys, and in fact for seven hundred thousand citizens, any one of whom may make complaint. No injunction will therefore lie.

- Fitts v. McGhee, 172 U. S. 516.  
 Ex Parte Young, 209 U. S. 156.  
 See Rose's Notes, Vol. 18, (172 U. S. 516)  
 44 L. R. A. (N. S.) 216, 224.

The case of *Fitts v. McGhee*, 172 U. S. 516, discusses the principle at length and holds that an officer specially charged with the execution of a state enactment alleged to be unconstitutional an injunction will sometime lie, but none (as in the case at bar) where officer not expressly directed to enforce, and the statute a criminal one. The citizen should await action and litigate the questions.

See 32 C. J. 279, 281, 981.

*Prout v. Starr*, 188 U. S. 543.

If the State statute not properly construed, resort must be had to the State courts. To prevent being accused of crime equity is powerless.

*Arbuckle v. Blackburn*, 113 Fed. 616,  
app. dis. 191 U. S. 405.

*Camden Ry. v. Catlettsburg*, 129 Fed. 427.

### CLAIMS OF APPELLANTS

The appellants claim that the Chrysler Company has a right to sell its property, and the contemplated action of the Commissioner will prevent Utterback-Gleason from making sales; that the dealers are in no sense "agents" within the meaning of the Revised Statutes of Maine, and take no part in "writing of placing" the contract; that the dealer cannot separate the premium from the cost of the car; that if the statutes are "properly construed" they have no application here, and, if construed to apply, are violating the Federal Constitution as regulating interstate commerce, impairing freedom of contract, taking property without due process, and denying full faith and credit; that the proposed Chrysler plan is a valid one and does not infringe upon the State Laws.

In this state "A contract of insurance, life excepted, is an agreement by which one party for a consideration promises to pay money or its equivalent, or to do some act of value to the assured upon the destruction or injury of something

in which the other party has an interest. And the business involving the issuance of such contracts in this state shall be carried on only by duly incorporated insurance companies."

#### Chapter 53, Section 1, Revised Statutes of Maine.

The Michigan Agreement between the Chrysler and the Palmetto is not a policy but a treaty to provide insurance as occasion might arise, upon property not in existence, to inure to the benefit and "on account of whom it may concern." Marine insurance it is called, but this treaty has undertaken to extend the principle of insuring the various interests involved in transportation of commodities by adding a distinct provision to insure the ultimate purchaser of the Chrysler product after interstate commerce has ceased and the marine hazard has terminated.

Under the Chrysler Treaty, the Palmetto, a foreign fire insurance company unauthorized to transact insurance in Maine, has waived the right to reject any purchaser of the Chrysler product as uninsurable who accepts the entire contract and pays the cumulative consideration, in which insurance has been called an item of overhead expense.

When compared with the Maine Standard Policy provisions, the position of the parties accepting the terms of insurance are reversed, for the retailer cannot sell a Chrysler automobile under its plan without effecting insurance with the purchaser on a new risk, in which the contracting parties are entirely different. In other words, the Palmetto waived consent when its Chrysler Treaty was executed and each new assured must accept its terms upon receipt of its commodity and payment of a consideration therefor. In the Maine Standard Policy, the insurance carrier retains the right to reject an undesirable transferee of title when the moral hazard may seem unsuitable.

The Chrysler Treaty proffers to the purchasers of all retail Chrysler automobiles indemnity against losses by fire,

and theft for one year. It is defined as excess insurance and may not be resorted to when the purchaser has provided other insurance which is adequate to compensate the loss. It is non-cancellable by its terms and all unabsorbed premiums are forfeited to the insurance carrier. Suit for recovery cannot be brought in Maine but the description of the plan itself implies that litigation will not be necessary as it is for the admitted interest of the Chrysler that all losses be adjusted without suit and to the full "satisfaction" of the assured, a position that is novel and against public policy, since all courts have discouraged the payment of fraudulent claims for two hundred years.

*The Chrysler Treaty is Subversive of the Fundamental Principles of Insurance, which Unregulated will Result in Abuses.*

1. It proffers and effects insurance without supervision by the State or Federal Government.
2. It proposes and effects insurance without consideration for the moral hazards involved.
3. It is compulsory and discriminatory since purchasers pay the same premiums for various terms.
4. It extends the interest of the assured, in the first instance, beyond the limit of the marine adventure.
5. It interferes with all reasonable regulation of insurance contracts by the State.
6. The reserve for losses must be sustained by voluntary donations from a foreign corporation.
7. It diverts premiums beyond the reach of legitimate local taxation.
8. It will lead to exemptions from other forms of local taxation and traffic regulation in defiance of reasonable state statutes and rights.
9. It violates the principle enunciated by the Supreme Court itself that "the public interest requires the distribution of loss over a wide area."
10. It substitutes special privilege, or negation of regulation, for public interest, with which insurance is affected.



*The Claims of the Appellants*

*First.* That a Maine retailer, who has become the absolute owner of Chrysler automobiles, is not effecting insurance risks when he retails such automobiles within the State and negotiates fire and theft insurance thereon with Maine purchasers, in compliance with the proposals of a treaty made in Michigan by the Chrysler with the Palmetto, a fire insurance company of South Carolina, which is unauthorized to transact any kind of insurance in Maine.

*Second.* That if the retailer is effecting insurance risks, he and the Chrysler should not be subjected to state regulation in negotiating such insurance for ultimate purchasers of Chrysler automobiles at retail in Maine and that the statutes of the state governing the transaction of insurance, to wit, Sections 121, 122 and 129, Chapter 53 of the Revised Statutes, and amendments thereto, are inapplicable and inoperative with reference to the acts of the corporation and retailers in Maine.

(a) Because the Chrysler Treaty, which purports to have been made in Michigan, is incontestable in Maine.

(b) Because enforcement of pre-existent statutes of Maine governing the initiation and maintenance of insurance risks through Maine agents and brokers will restrict or "burden" interstate commerce by interference with the plan to provide all ultimate purchasers of Chrysler automobiles with fire and theft insurance in accord with the proposals of the Palmetto in the specifications of the Chrysler Treaty.

(c) Because their contractual rights under the Fourteenth Amendment will be invaded in Maine and their business and profits reduced by state regulation of the insurance proposals arranged under the Chrysler Treaty.

*The Defendant Claims,*

*First. The retailer of Chrysler automobiles effects insurance in Maine.*

The Chrysler is not designated in its charter of incorporation as an insurance company nor broker and is not eligible to effect insurance within the State of Maine by itself or by agents or brokers. (Chapter 53, Section 1, Revised Statutes of Maine.) In case of sale of a Chrysler automobile in Maine the retailer, who has been designated in the Chrysler Treaty and instructed by the Palmetto as its agent for that special purpose, accepts a composite consideration and effects a risk of insurance within the state. He also reports the sale to the Chrysler at Detroit, Michigan, giving the name of the purchaser (new assured), date of sale (beginning of new risk period), motor number, style, etc. (every descriptive element necessary to issue an ordinary policy). This procedure is merely the employment of a code system which in plain English, means: "Insure Car Number XX for your new assured John Doe, of Augusta, Maine, and charge the premium to my former remittance on account of the same."

Indeed, the instructions to the retailer from the Chrysler were broader than the occasion required. The retailer was informed that no Chrysler automobile could be sold without insurance; that the Palmetto was the insurer; that the Palmetto had been reinsured by one of the largest automobile insurance companies in the country; that the property was insured against the hazard of loss from fire and theft; that the insurance was safe and the adjustment would be satisfactory to the assured; that a certificate of insurance would be delivered to the purchaser in consideration for a premium which the purchaser pays when he pays for the automobile; that the premium is lower than that provided for other insurance on account of the mass purchasing power of the automobile company; that the insurance was purchased at wholesale by the Chrysler for the benefit of every purchaser of a Chrysler automobile.

The retailer effects insurance on property which is situated in Maine, and belongs to himself absolutely, unaffected by commercial regulation by the Federal government or the most liberal interpretation of marine insurance limitations.

The premium, although intentionally submerged in the term "delivery charges" is, nevertheless, a real and tangible consideration for insurance indemnity, paid by the purchaser, and implies assent to the entire contract, in compliance with the proffer of automobile and insurance in combination.

If the premiums were absorbed during the passage of the property through carrier, distributor and retailer, as claimed by the Palmetto, the new insurance contract would be without consideration and void in Michigan as well as in Maine, and any creation of reserves to liquidate losses would be purely voluntary on the part of the Chrysler.

Furthermore, the plaintiff is not the proper party in equity to segregate, at his caprice, the separate prices at which more than one commodity or privilege may be rated when sold in combination, and especially where the avoidance of a penal statute may result from assigning fictitious or no prices to commodities or privileges of value. In construing such procedure the object attained is more conclusive than any method by which it may be effected.

The Supreme Court of the United States has already decided that while a resident could not be restrained in his freedom to contract for his own insurance with a foreign unlicensed company the state could "prevent the foreign insurers from sheltering themselves under his freedom in order to solicit contracts which otherwise he would not have thought of making." And the court added that the state "may prohibit not only agents of the insurers, but also brokers, from soliciting or intermeddling in such insurance, and for the same reasons."

Nutting v. Massachusetts, 183 U. S. 558.

See also opinion of court—Record page 40 (No. 273)

Record page 41 (No. 904)

If the insurance "were obtained for the resident by a broker who was himself a resident, this would be a procuring within the state." Even the collection of insurance premiums in a state for an insurance company of another state is doing business within the former state.

Hooper v. California, 155 U. S. 648.

Calif. Mut. Life Ins. Co. v. Spratley, 172 U. S. 602.

The court has proceeded farther in defining the civil liability of agents and brokers on the ground that there is a "vital distinction between acts done within and acts done beyond a State's jurisdiction."

Allgeyer v. Louisiana, 165 U. S. 588.

The dictum declared that "A state can lawfully punish or regulate, by imposition of civil liability, or otherwise, the doing of acts within the territory of such state by agents for foreign insurance companies calculated to neutralize and make ineffective the statute which prescribed conditions upon which alone the right existed in a foreign insurance corporation to do business within the state."

Hooper v. California, 155 U. S. 657.

The Chrysler Treaty is an executory agreement in which the essence of legal obligation on the part of the Palmetto is not the sale of commodities but services to be performed at future time in effecting, through Maine retailers of Chrysler automobiles, insurance upon property of Maine purchasers after it has become private property within the State, in violation of pre-existent statutes which prohibit the acts of agency for unauthorized companies by unlicensed residents.

The retailer of Chrysler automobiles, which, as alleged in the complaint, he owns outright, is performing the services of an agent for the Palmetto under the Chrysler Treaty, as well as those of a broker for the purchaser of the auto-

mobile. When he performs insurance functions by an understanding with the insurance company and effects insurance thereby, he is *de facto* an insurance agent for the Palmetto and when he so acts without a license from the insurance department of Maine, he is violating police regulations officially designated as Sections 121, 122 and 129 of Chapter 53 of the Revised Statutes of Maine, and amendments thereto, and should not be permitted to deprive citizens of Maine of the full protection of the laws.

The Maine statutory provisions which manifestly interfere with the operation of the Chrysler Treaty are the following:

Sec. 121. The insurance commissioner may issue a license to any person to act as an agent of a domestic insurance company, upon his filing with the commissioner a certificate from the company or association, or its authorized agent, empowering him so to act; and to any resident of the state to act as an agent of any foreign insurance company, which has received a license to do business in the state as provided in section one hundred and five or section one hundred and fifty, upon his filing such certificate. Such license shall continue until the first day of the next July. If any person solicits, receives or forwards any risk or application for insurance to any company, without first receiving such license, or fraudulently assumes to be an agent and thus procures risks and receives money for premiums, he shall be punished by a fine not exceeding two hundred dollars, or imprisonment not exceeding sixty days for each offense; but any policy issued on such application binds the company if otherwise valid. Agents of duly authorized insurance companies may place risks with agents of other duly authorized companies when necessary for the adequate insurance of property, persons or interests. An insurance agent shall be personally liable on all contracts of insurance unlaw-

fully made by or through him, directly or indirectly, for or in behalf of any company not authorized to do business in the state. Nothing herein contained shall require a duly licensed insurance agent or broker to obtain any license for an employee doing only clerical office work in the office of said agent or broker.

"Sec. 122. The insurance commissioner may license any person as broker to negotiate contracts of insurance for others than himself for a compensation, by virtue of which license he may effect insurance with any domestic company or its agents; or any resident of the state to negotiate such contracts and effect insurance with the agents of any foreign company who have been licensed to do business in this state as provided in sections one hundred and five and one hundred and twenty-one, but with no others; said license shall remain in force one year unless revoked as hereinafter provided. Whoever, without such license, assumes to act as such broker, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not more than sixty days for each offense. The insurance commissioner, after reasonable notice, may revoke the license of any agent or broker for violation of the insurance laws; or the license of any agent upon receipt of written request therefor from the company filed in the office of said commissioner.

"Sec. 129. No insurance company transacting fire or liability insurance in this state, and no agent or broker transacting fire or liability insurance, either personally or by any other party, shall offer, promise, allow, give, set-off, or pay, directly or indirectly, as an inducement to fire or liability insurance on any risk in this state, now or hereafter to be written, any rebate of or part of the premium payable on any

policy or of the agent's commission thereon; nor shall any such company, agent or broker, personally or otherwise, offer, promise, allow, give, set-off or pay, directly or indirectly, as an inducement to such fire or liability insurance any earning, profit, dividends or other benefit, founded, arising, accruing or to accrue on such insurance, or therefrom, or other valuable consideration, or any special favor which is not specified, promised or provided for in the policy of insurance, nor shall any such company, agent or broker, personally or otherwise, offer, promise, give or sell as an inducement to such insurance any stocks, bonds, securities or property, or any dividends or profits accruing or to accrue thereon, nor, except as specified in the policy, offer, promise or give any other thing of value whatsoever, or purchase any stocks, bonds, securities or other property, for which shall be paid or agreed to be paid more than the fair and reasonable value thereof."

The inevitable inference is that the Palmetto with the Chrysler, both foreign corporations, are engaged in transacting insurance in Maine under an obvious subterfuge; that if any burden has been imposed upon interstate commerce it has been provided by the parties; that the Chrysler Treaty was designed to evade state insurance regulation in Maine; that the retailers of Chrysler automobiles in Maine, who are bound by law and fealty to respect organized governmental regulation therein and to observe its constitutional provisions and legislative enactments, are designated in the Chrysler Treaty as agents of the Palmetto for the special purpose of aiding and abetting it in making possible the procurement of insurance risks within the state by pre-arranged unlawful methods.

It is admitted that said retailer is instructed and does explain the Chrysler plan which includes the proffer of in-

surance by the Palmetto to the prospective purchaser of a Chrysler automobile; that he does furnish and assist in forwarding the application prepared for the particular purpose of effecting, and containing answers to predetermined questions which are requisite to establish, the relationship of insurer and insured; that he does become the instrumentality or agency by which liability is localized and effected, with proof of assent by the purchaser to the universal proposal for insurance as proffered by the Palmetto and explained by the retailer of a Chrysler automobile; who by the preliminary sale of his own property must prepare the way for consummation of an insurance risk; that he does accept in Maine the concealed consideration which has been advanced by him in anticipation of sale of the automobile and recovery of the premium in combination and simultaneously; that he is by the terms of the Chrysler Treaty the representative of the insurance company to keep it informed of future transfers of title and terminations of insurance risks, to accept and advance the settlement of claims for indemnity and encourage the satisfactory adjustment of losses for his and their benefit and future good will.

There can be no doubt that without the retailer's co-operation the terms of the insurance proposal could never be established or made known to the actual contracting parties. In fact, there is no other way that such parties could be introduced to each other for a realization of their insurance relations.

*Second. (a) The Chrysler Treaty is Violative of Local Statutes and of the Rule of State Comity.*

Section 37 of Chapter 48 of the Insurance Laws of the State of South Carolina, in which the Palmetto is domiciled, reads as follows:

"No fire insurance company or association not incorporated under the laws of this state, authorized



- to transact business here, shall make, write, place, or cause to be made, written or placed, any policy, duplicate policy, or contract of insurance of any kind or character, or any general or floating policy, upon property situated or located in this state, except after the said risk has been approved, in writing, by an agent who is a resident of this state, regularly commissioned by the company doing business in this state, who shall countersign, all policies so issued, and receive the commission therein when the premium is paid, and the State shall receive the license fees required by law to be paid on the premiums collected for insurance on all property located in this state."

Section 2, Chapter 2, of Part 4 of the Act of 1917, numbered 256, Laws of the State of Michigan, entitled "Fire, Marine, Automobile and other Insurance," reads as follows:

"All contracts of fire insurance upon property real or personal located in this state in companies not at the time of the making of such contracts duly authorized under the laws of this state to make such contracts are hereby declared to be void and unenforceable and no action at law or in equity shall be maintained on any such contract in any court."

Section 109, Chapter 53, of the Revised Statutes of Maine, reads as follows:

"When by the laws of any other state or country, any fines, penalties, licenses, fees, deposits or other obligations or prohibitions additional to or in excess of those imposed by the laws of this state upon foreign insurance companies and their agents are imposed on insurance companies of this state and their agents, the same fines, licenses, fees, deposits, obligations or prohibitions shall be imposed upon all insurance companies of each state or country and their agents doing business in or applying for admission to this state."

Hence, the principle contained in the Chrysler Treaty is violative of the laws of Michigan, where it was made, violative of the laws of South Carolina, where the Palmetto is incorporated, and violative of the reciprocal law of Maine which is in exact accord with the insurance provisions of both states in prohibiting unauthorized insurance companies of those states from transacting insurance within it.

These statutory prohibitions of South Carolina, Michigan and Maine are not in conflict with the constitutional prerogative of Congress "to regulate commerce with foreign nations and among the several states."

Paul v. Virginia, 8 Wallace U. S. 177.

N. Y. Life Ins. Co. v. Deer Lodge County,  
231 U. S. 495.

"Comity due from one state to another is not required to be more than equal and reciprocal."

People v. Fire Association, Am. Rep. 44-380.

*Where the Insurance Contracts of a Personal  
Character are Made.*

A policy upon a "cargo" and "on account of whom it may concern" will inure to the benefit "of any person subsequently ascertained to have *such* an interest who adopts the insurance."

The word "such" in the context refers to some marine insurable interest in a cargo while in transit, and at times when it would be impossible on account of the variety and character of the interests involved to procure separate contracts of indemnity for the various parties who might have a community of interest in the transportation and ownership of commodities while they are in transit. Some of the insurable interests have been designated as applicable to marine risks.

Hooper v. Robinson, 98 U. S. 528.

The demand for marine insurance arose from public necessity and there is no occasion at present to extend it beyond its proper sphere or to superimpose upon it private contracts of insurance of physical property which has become fixed within the territorial jurisdiction of a state beyond Federal control.

To recur to the word "adopts" as used in the case just alluded to, the meaning of adoption in law has been judicially determined as follows: Adoption is in legal effect the making of a contract as of the date of the adoption."

McArthur v. Times Printing Co. 48 Minn. 319;  
N. W. 216.

Gavitt v. Gouter, 42 Pa. St. 143,  
Schreyer v. Turner Flouring Mills Co.  
29 Oregon, 1.  
43 Pacific, 719.

Therefore, adoption involves all the essentials of a new contract. In the case of the Chrysler Treaty there could have been no meeting of minds until sale in Maine, where the ultimate purchaser of a Chrysler automobile and his subsequent transferees assent to the terms of insurance proffered by the Palmetto, wherein the company has previously waived its right to investigate and reject the personal hazard in favor of customers of the Chrysler Company.

Herein are involved new parties and a new contract which was contemplated and arranged for in Michigan and was to be completed by the ultimate purchaser in Maine, by mailing an acceptance to the insurance proposal in Maine.

"A contract is complete where nothing further remains to be done to give either party a right to have it carried into effect, or, in other words, when the last act is done which is necessary to render the contract obligatory. Therefore, when the parties are residents of different states, the state where the final assent is given, or the last necessary act to complete it is done, is the place where the contract is made notwithstanding all preliminary arrangements were made in the other state."

Ford v. Buckeye Ins. Co. Am. Dec. 99-668.

*Second. (b) The Right of the State to Regulate All Kinds of Insurance.*

The Supreme Court of the United States decided that the business of insurance companies is purely intrastate and that "the right of a state legislature to regulate the conduct of corporations, domestic and foreign, of insurance as a business affected with a public interest" was indisputable.

*Union Fire Ins. Co. v. Wanberg*, 260 U. S. 73.

The same court has determined that state regulation applies, with equal force, to all kinds of insurance contracts, in the following words: "The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse, and in this respect there is no difference whatever between insurance against fire and insurance against 'the perils of the sea.' " (marine insurance)

*Hooper v. California*, 155 U. S. 655,  
239-509 U. S.

Insurance legislation is police regulation and it has been decided that "When the local police regulation has real relation to the suitable protection of the people of the state, and is reasonable in its requirements, it is not invalid because it may incidentally affect interstate commerce.

*Savage v. Jones*, 225 U. S. 525.

The doctrine of *Sherlock v. Alling* was reaffirmed as follows: "Legislation, in a great variety of ways may effect commerce and persons engaged in it without constituting a regulation of it within the meaning of the constitution. \*\*\*\*\* And it may be said generally, that the legislation of a state, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within

its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."

C. R. I. P. Railway Co. v. Arkansas, 219 U. S. 460.

And the right to affect commerce incidentally, in a reasonable enforcement of police regulations by the state, includes a right in the legislature to impose a fee or license for such purpose.

McLean v. Railroad, 203 U. S. 55.

In a dozen cases that assert the right of a state to affect commercial intercourse by legislation, six were interferences with the importation of commercial articles into states and six were restraints upon the carriers. All of these cases involved state enactments more or less affecting interstate or foreign commerce, but were sustained upon the ground that they were not directed against nor were direct burdens upon interstate or foreign commerce.

If commerce is affected in this case that effect is very remote. It does not interfere with the right to dispose of an article of commerce nor the method of importation, but relates to something that is not commerce, is to be consummated after commercial relations are terminated, and has been superimposed by a foreign insurance company in an unwarrantable manner.

In fact, the complainant himself entered into the agreement, if such is the result, to burden his own commerce with a treaty or proposal to effect insurance between an unlicensed insurance company and the ultimate purchasers of his product before the proposed article of commerce was in existence or had become subject to interstate commercial regulation. And he has defeated the constitutional right of the purchaser to buy that article without being subjected, in every instance, to the payment of an arbitrary premium of indeterminate amount for an insurance policy of uncertain terms and doubtful validity, which the purchaser has never seen and relies upon the retailer to expound.

Furthermore, if the purchaser afterward secures other insurance upon the automobile the Chrysler Treaty withdraws its protection without rebate or return of unearned premium. It furnishes merely excess insurance and if the additional insurance is adequate will automatically extinguish its own obligation to contribution in case of loss. If the additional, or private, insurance contract as is customary in such policies, is limited to contribute to losses only in proportion to the total amount of indemnity involved, the result is the payment of premium for a liability for which the insured cannot recover.

Insurance regulation by the states is not a regulation of commerce, has never been surrendered by the states nor assumed by Congress. It should not be stricken down.

C. R. I. P. Railway v. Arkansas, 219 U. S. 462.

Reduction Company v. Sanitary Works, 199 U. S. 318.

*The Appellants claim:*

1. That the defendant is "attempting unlawfully to regulate and burden interstate commerce." Insurance is not commerce, and, in the case at bar, does not affect commerce.

Paul v. Virginia, 8 Wallace U. S. 183.

If it did, it has been held that "When the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. Thus, there are certain subjects having the most obvious and direct relation to interstate commerce, which nevertheless, with the acquiescence of Congress, have been controlled by state legislation from the

foundation of the Government *because of the necessity that they should not remain unregulated.* Ibid, 403. \*\*\*\*\* The power exists until Congress has acted, to incidentally regulate by health and quarantine laws, even although interstate and foreign commerce is affected, and the power to *absolutely prohibit* additionally obtains *where the thing prohibited is not commerce*, and hence not embraced in either interstate or foreign commerce."

The Minnesota Rate Cases, 230, U. S. 402.

The fact is, that before the insurance is effected in Maine interstate commerce has terminated. The Chrysler claims that it has parted with all property in the automobiles since they are paid for by the retailers when delivered within the state.

The end of interstate commerce is indicated clearly in the following decision: "The business of the Supply Company, with an exception not important here, is wholly interstate. The sales and deliveries are in large quantities not for consumption, but for resale to consumers. There is no relation of agency between the Supply Company and the distributing companies, or other relation except that of seller and buyer and the interest of the former in the commodity ends with its delivery to the latter, to which title and control pass absolutely. \*\*\*\* With delivery of the gas to the distributing companies, however, the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is *intrastate business and subject to state regulation.*"

Kansas v. Kansas Natural Gas Co. 265 U. S. 306.

2. The defendant is charged with "depriving the plaintiff and said customers of the plaintiff of property *without due process of law.*"

Here the plaintiff must allude to the effect of strict interpretation and enforcement of the Maine statutes governing

insurance agents and brokers as deprivation of property without due process, but the Supreme Court has declared:

"That inhibitions of the Constitution of the United States upon the impairment of the obligation of contracts, or the deprivation of property without due process, or the equal protection of the laws, by the states, are not violated by the legitimate exercise of legislative power in securing the public health, safety and morals. The governmental power of self-protection cannot be contracted away, not can the exercise of rights granted, nor the use of property, be withdrawn from the implied liability to governmental regulations in particulars essential to the preservation of the community from injury."

Beer v. Massachusetts, 97 U. S. 25.

Fertilizing Co. v. Hyde Park, 97 U. S. 659.

Barbier v. Connolly, 113 U. S. 27.

New Orleans Gas Co. v. Louisiana Gas Co.  
115 U. S. 650.

Mugler v. Kansas, 123 U. S. 623.

Budd v. New York, 143 U. S. 517.

Northern Pacific Railway v. Duluth, 208 U. S. 596.

"And in the exercise of such" (police) "powers the state has wide discretion in determining its own public policy and what measures are necessary for its own protection and properly to promote the safety, peace and good order of its people.

Terrace v. Thompson, 263 U. S. 217.

3. The defendant is accused of impairment of "the freedom of contract guaranteed by the Federal Constitution."

The doctrine of the court has been established and confirmed to the effect that "the exercise of the police power in the interest of public health and safety is to be maintained



unhampered by contracts in private interests, and that uncompensated obedience to laws passed in its exercise is not violative of property rights protected by the constitution."

Northern Pacific Railway v. Duluth, 208 U. S. 597.

Union Bridge Co. v. United States, 204 U. S. 395.

Chicago, Burlington & Quincy R. R. v. Illinois,  
200 U. S. 592.

"The principle involved in these decisions is that where the legislative action is arbitrary and has no reasonable relation to the purpose which it is competent for government to effect, the legislature transcends the limits of its power in interfering with the liberty of contract; but where there is reasonable relation to the object within the governmental authority, the exercise of the legislative discretion is not subject to judicial review."

It is but "an exercise of the sovereign right of government to protect lives, health, comfort, morals and general welfare of the people, and is paramount to any rights under contracts between individuals."

Chicago, B. & Quincy R. R. Co. v. McGuire,  
219 U. S. 569.

Manigault v. Springs, 199 U. S. 480.

It has been asserted by the court that "as in a state of civil society, property of a citizen or subject is ownership, subject to the lawful demands of the sovereign, so contracts must be understood *to be made* in reference to the possible exercise of the rightful authority of the Government and no obligation of a contract can extend to the defeat of legitimate government authority."

Louisville & Nashville R. R. v. Mottley, 219 U. S. 482.

In Adkins v. Childrens' Hospital, 261 U. S. 546, the court said:

"There is, of course, no such thing as absolute freedom of contract. It is subject to a great variety of restraints", and asserted that "the existence of a public interest in any business to be affected" would provide an adequate reason for restraint.

The same court had already conceded "the right of a state legislature to regulate the conduct of corporations, domestic and foreign, of insurance as a business affected with a public interest."

National Union Ins. Co. v. Wanberg, 260 U. S. 73.  
German Alliance v. Lewis, 233 U. S. 389.

"The principle to be extracted from all the cases is that the law will not lend its support to a claim founded upon its violation.

Blackwell v. Webster, 29 Fed. Rep. 615.

4. The defendant is charged with "denial of the equal protection of the law."

Like the claim of "deprivation of property without due process", this assumption cannot be maintained to defeat the operation of statutes providing for reasonable insurance regulation.

Neither the Fourteenth Amendment nor any other amendment "was designed to interfere with the power of a state, sometimes termed its police power, to promote the health, peace, morals, education and good order of its people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity."

Barbier v. Connolly, 113 U. S. 31.

"The Fourteenth Amendment \*\*\*\*\* does not take away from the state those powers of police that were reserved at the time of the adoption of the Constitution."

Terrace v. Thompson, 263 U. S. 216.

The insurance enactments of Maine represent declarations of public policy and may be regarded as indicative of the wisdom of former legislatures. The mere fact that some of them have been in effect for more than fifty years is proof of long-continued exercise of the state's prerogative and evidence of their reasonable application to the needs of its people.

5. The final allegation made by the plaintiff is an attempt on the part of the defendant to "regulate, prohibit and burden" in Maine, "the making and performance of a contract lawfully made and to be performed" in Michigan.

All organized forms of government require, and it has been the dictum of the Supreme Court for many years, that "no contract with any person, individual or corporate, can impose restrictions upon the power of the states", in a reasonable enforcement of legislative enactments.

Minneapolis & St. Louis Railway v. Emmons,  
149 U. S. 368.

And this would be true whether the plaintiff can prove that the Chrysler Treaty were made in Michigan and can be performed wholly within that state or not.

The State of Maine will lose, by the Chrysler Treaty, one and one-half per cent of all taxable premiums collected by virtue of the treaty, and the Palmetto has already conceded that the Chrysler certificates are insurance contracts required to be signed by local insurance agents, and that such premiums are taxable in other states like premiums collected within them through the agency system by authorized companies.

Whether a state can tax unauthorized insurance premiums is not the issue. The question is rather whether the taxation of unauthorized insurance premiums to residents of Maine is discriminatory to the extent of prohibition.

In the case at bar the premium tax loss represents what the state would have been legally entitled to impose and collect.

If a state can be deprived of its taxing power by the incontestability of a private contract made elsewhere, the same parties involved in this case can enter into a private contract to sell their product exempt from local taxation and local registration for one year. Such a policy must be accounted disastrous so far as state regulation is to be considered.

The motions should be dismissed.

Respectfully submitted,

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term, A. D. 1926  
Nos. 287 and 286

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No. 287

CHRYSLER SALES CORPORATION,

*Plaintiff and Appellant,*

v.

W. STANLEY SMITH, Commissioner  
of Insurance of the State of Wisconsin,

*Defendant and Appellee.*

---

No. 286

CLARK MOTOR COMPANY,

*Plaintiff and Appellant,*

v.

W. STANLEY SMITH as Commissioner  
of Insurance of the State of Wisconsin,

*Defendant and Appellee.*

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**BRIEF OF RESPONDENT, W. STANLEY SMITH,  
Commissioner of Insurance of Wisconsin**

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*Explanation*—Appellant's brief not having been served, this brief is prepared more in the nature of a general discussion of the legal principles raised in the pleadings and in the arguments in the lower court than as a reply to appellant's brief in this court so we may not follow the same order of discussion as appellant's brief and may add something in reply at the close of this brief if we think necessary.



## STATEMENT OF FACTS

This is an appeal from an order denying to plaintiff a temporary injunction enjoining the defendant Insurance Commissioner of Wisconsin from enforcing the provisions of the insurance laws of Wisconsin against the appellant and its associated companies and their method of doing business in Wisconsin, which respondent claims includes the doing of insurance business in Wisconsin, and delivering insurance policies in Wisconsin in violation of the statutes of the state, because neither the insurance company nor its agents were licensed under the laws of Wisconsin, and because the policies were not issued through and signed by such a licensed agent in Wisconsin as required by the statutes of the state.

Appellant claims, first, that its method of doing business in Wisconsin is not doing an insurance business in the state in violation of its laws and, second, if it is, then it claims that such laws are unconstitutional and void.

This scheme of doing business involves a number of corporations.

The Chrysler Corporation is a corporation organized under the laws of Delaware, and manufactures Chrysler automobiles in Michigan, Ohio and Indiana (T. R. 7).

It is the manufacturing corporation.

The Chrysler Sales Corporation is a corporation organized under the laws of Michigan with its principal office at Highland Park in that state, and it buys all the Chrysler automobiles manufactured by that company and sells them to dealers throughout the United States (T. R. 7).

It is the wholesale selling corporation.

The Commercial Credit Company is a corporation organized under the laws of Maryland with its principal office at Baltimore, and it purchases all the conditional sales contracts on Chrysler automobiles sold on credit or part payment. Such contracts are

a lien on the automobile sold for the unpaid purchase price. It is the financing corporation.

The Clark Motor Company is a corporation organized under the laws of Wisconsin, and buys Chrysler automobiles at wholesale from Chrysler Sales Corporation and sells them at retail to purchasers in Wisconsin, and with each sale it is required to and does sell insurance covering the automobile in favor of all interests in the automobile as they may appear. It reports each sale made so that an insurance policy can be issued and delivered to the purchaser.

It is the retail sales corporation.

The Palmetto Fire Insurance Company is an insurance corporation organized under the laws of South Carolina and is licensed to do insurance business in Michigan but not in Wisconsin (T. R. 9). Under a so-called master policy of insurance (T. R. 38) issued by Chrysler Sales Corporation, dated August 4, 1925, it agreed to insure all Chrysler automobiles sold under this so-called Chrysler plan and to issue and send by mail to each purchaser at retail of a Chrysler automobile when notified of such sale, a so-called certificate of insurance (T. R. 50) which is in effect an insurance policy on the particular automobile in favor of the persons or corporations interested in the automobile as their interests may appear at the time of loss, if any.

It is the insurance corporation.

Under this scheme or plan, one of the so-called certificate insurance policies is delivered in Wisconsin by the insurance company by mail to each purchaser of an automobile on the report of the sale by the Clark Motor Company to the Chrysler Sales Company and by that company to the insurance company, and the policy in each case names the purchaser and describes the car as the property insured in favor of the purchaser and other parties as their interests may appear.

We claim, and the court found, that under this plan the Palmetto Insurance Company, a foreign corporation, was doing an

insurance business in Wisconsin without having first paid the license fee and obtained a license therefor as required by sec. 201.41 of the Wisconsin Statutes, and without issuing and delivering such policies through and having them signed by a resident, authorized, or licensed agent holding a certificate of authority from the insurance commissioner as required by sec. 201.44 of the Wisconsin Statutes, and without complying with any of the regulatory provisions of the Wisconsin Statutes relating to the doing of insurance business in Wisconsin.

The application for this temporary injunction was heard before Justice Evans of the Court of Appeals and Judges Geiger, and Luse of the two district courts of Wisconsin after oral arguments and submission of briefs.

The court's opinion (T. R. 68) (9 Fed. (2d) 666) gives such a clear and comprehensive review of the law and authorities on the general subject of insurance, and of the special provisions in the Wisconsin Statutes regulating and requiring the licensing and controlling the manner of doing insurance business in Wisconsin for the protection of its citizens, that we feel like apologizing for attempting to add anything to that opinion and discussion, but we realize that sometimes the same fact or argument stated in a different way may be helpful in a proper solution of a controverted proposition, and upon that theory we submit the following for the consideration of the court:

### ARGUMENT

Buying insurance is not like buying an article, object or thing which is open for examination and inspection by the purchaser, and where the value is in the thing itself. In insurance, its value depends very largely upon the responsibility of the company, the conditions of the contract, and the remedies available for its enforcement, of which the insured knows little or nothing. Because of such facts the business is subject to the police powers

of the state, and it may be licensed and regulated by the state in the interest of its citizens, the necessity for and the method and character of such regulations being largely in the discretion and judgment of the legislature of the state for the protection of its citizens.

*Camfield v. United States*, 167 U. S. 518;

*Doyle v. Continental Insurance Co.*, 94 U.S. 535.

It is held that neither the original constitutional provision nor the Fourteenth Amendment specifies or limits the subjects upon which the police power of the state can be lawfully exercised, nor take away from the states the police powers that were originally exercised by them.

*James v. Brim*, 165 U.S. 180;

*Mugler v. Kansas*, 123 U.S. 623;

*Barbier v. Connolly*, 113 U.S. 27.

The United States Constitution was not designed to interfere with the police powers of the state to protect the lives, liberties and properties of its citizens.

*Re: Kremmler*, 138 U.S. 436.

The police power of the state covers all matters having a reasonable relation to the protection of the public health, safety and welfare.

*State ex rel. Carnation Milk Products Co. v. Emery*, 178 Wis. 147.

If the subject for the exercise of the police power is legitimate, the legislature may adopt such measures as are necessary to make it effective.

*Id.*

The power of the state to regulate business for the protection of its citizens gives to a state the power to license and regulate all insurance business and insurance companies, and as to an insurance company of another state or a foreign country, it is not a citizen within the protection of the United States Constitution, and it may therefore be absolutely prohibited from doing business in the state, or it may be allowed to do business on such terms and conditions as the legislature of the state may require, which, it is held, includes the right of the state to even prohibit such a company from transferring to the federal court a suit brought against it in the state court although that right could not be denied to a natural person who is a citizen of another state.

*Doyle v. Continental Insurance Co.*, 94 U.S. 535.

The right of a state to absolutely prohibit a foreign corporation and especially a foreign insurance corporation from doing business in the state or to admit it on such terms as it sees fit, is discussed at length later in this brief. The above cases are cited here so as to have in mind the general rule while considering the provisions of the Wisconsin Statutes relating to and regulating insurance.

### **Provisions of the Wisconsin statutes**

All personal property of insurance companies is exempt from taxation by sec. 70.11 which provides that:

"The property in this section described is exempt from taxation, to wit: \* \* \* (14) All the personal property of all insurance companies that now are or shall be organized or doing business in this state."

That refers alike to domestic and foreign companies. In lieu thereof sec. 76.30 provides that:

"Every company transacting the business of insurance

against fire \* \* \* shall pay to the state \* \* \* each year, a tax of two and three eighths per centum on the amount of the gross premiums received for direct insurance, less return premiums and cancellations on direct insurance, \* \* \*."

Sec. 201.41 prohibits insurance companies from transacting any insurance business in the state without a license. It provides:

"No insurance corporation shall transact any insurance business in this state without first having paid the license fees and obtained the license therefor as required by law."

Sec. 201.38 provides that:

"No company incorporated under the laws of any other state or of any territory or of an foreign government, or other insurer having its home office outside of this state shall directly or indirectly take risks or transact any business of insurance in this state except upon compliance with and maintenance of the following requirements: \* \* \*."

"(2) (a) Any such company or other insurer shall first file a written instrument, duly executed, declaring that it desires to transact the business of insurance in this state and that it will accept a license therefor according to the laws of this state, which shall cease and terminate in case such insurer shall remove or make application to remove into any court of the United States any action or proceeding commenced in any court of this state upon a claim or cause of action arising out of any business or transaction done therein, or in case it shall violate or fail to comply with any provision of law applicable to such insurer, or in case its capital shall be impaired to the extent of twenty per cent, and shall not be made good within such time as the commissioner of insurance shall require, if such commissioner shall, in either case declare its license revoked therefor."

"(b) Such insurer shall also appoint, in writing, the commissioner of insurance and his successors in office to be its true and lawful attorney upon whom all legal process in any ac-

tion or proceeding against it may be served, and in such writing shall agree that any legal process against it which is served on said attorney shall be of the same legal force and validity as if served on the insurer, and that such authority shall continue in force so long as there is any liability outstanding against the insurer in this state, whether the license of such insurer to do business in this state shall remain in force or shall be revoked or otherwise terminated. A copy of such writing, duly certified, shall be filed in the office of the commissioner, and copies certified by him shall be deemed sufficient evidence thereof.

“(c) Service upon such attorney shall be deemed sufficient service for all purposes upon the principal, and shall be as effectual for all purposes as though made upon a corporation or other insurer existing under the laws of this state. The service of such process shall be made by leaving duplicate copies thereof in the hands or office of the commissioner of insurance and paying to him for the use of the state a fee of two dollars. A certificate by the commissioner of insurance showing such service and attached to the original or a third copy of such process presented to him for that purpose shall be sufficient evidence thereof. \* \* \*.

“(3) It shall file in the office of said commissioner a copy of its charter, duly certified by its secretary, together with a statement verified by the oath of the president, vice-president or other chief officer and of the secretary, containing the name of the corporation, place where located, amount of its capital stock, and a detailed statement of its assets showing the amount of cash on hand and in bank, the amount of real estate, and how much of the same is incumbered by mortgage or otherwise, the number of shares of stock of every kind owned by it, the par and market value of the same, the amount loaned on bond and mortgage and other securities, stating the kind and amount loaned on each, the estimated value of the whole amount of such securities and all its other assets or property and the value thereof; also showing the amount of its indebtedness, the amount of losses adjusted and unpaid, the amount incurred and in process of adjustment, the amount resisted as illegal or fraudulent and all other claims existing against it;

and a copy of the last report, if any, made under any law of the state by which it was incorporated."

## Agents

Sec. 209.05 defines agents as follows:

"Every person \* \* \* who solicits insurance \* \* \* or transmits an application \* \* \* or who makes any contract for insurance or collects any premiums \* \* \* or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance corporation, or advertises to do any such thing, shall be held to be an agent of such corporation."

Sec. 201.44 provides:

"(1) No policy of insurance shall be issued or delivered in this state by any company, except through an agent who shall be a resident of this state and hold a certificate of authority under section 209.04 for the kind of insurance effected by such policy.

"(2) In case of fire insurance, the agent shall countersign and enter the policy in a permanent record to be kept by him for that purpose. Such agent shall be paid the commission on the policy.

"(3) The books of every person transacting or purporting to transact the business of an insurance agent shall at all times be open to the inspection of the commissioner of insurance, his deputy or examiners and a refusal to permit such inspection shall be prima facie evidence of a violation of this section."

Sec. 209.04 (1) provides:

"No person, officer or broker, agent or subagent of any insurance corporation of any kind required to pay any tax or license fee to the state shall act or aid in an manner in transacting the business of or with such corporations in placing risks or in collecting any premiums or assessments or effecting insurance therein, without first procuring from the insurance



corporation a certificate of authority; nor shall any such person, officer, broker, agent, or subagent after such certificate shall have expired, or after revocation by the commissioner of insurance of such certificate or of the license of such corporation and until a new certificate or license shall have been issued to him, do or perform any such act for or in behalf of any insurance corporation. \* \* \*."

Sec. 209.11 provides:

"No corporation, association, partnership or individual shall do any business of insurance of any kind, or make any guaranty, contract or pledge for the payment of annuities or endowments or money to the families or representatives of any policy or certificate holder, or the like in this state or with any resident of this state except according to the conditions and restrictions of these statutes. And the term insurance corporations as used in this chapter may be taken to embrace every corporation, association, partnership or individual engaging in any such business."

Sec. 203.07 provides:

"(1) All future contracts of insurance against the risk of loss or damage by fire or lightning upon property in this state shall be held to be made and effected within this state.

"(2) No unauthorized fire insurance company or other unauthorized insurer shall hereafter make or issue, directly or indirectly, any policy of insurance on property in this state, except as specifically authorized by law."

Sec. 201.40 provides that when the insurance commissioner is satisfied as to the responsibility of any company, he shall deliver a license and to every agent a certificate that the company is licensed.

Sec. 201.40 (2) then gives the insurance commissioner the same power and supervision over such foreign corporations as he has over corporations of the state.

Sec. 201.41 (1) provides:

"No insurance corporation shall transact any insurance business in this state without first having paid the license fees and obtained the license therefor as required by law."

The foregoing are the principal regulatory provisions of the Wisconsin Statutes enacted under the police power of the state to protect its citizens against irresponsible insurance companies and undesirable insurance contracts and schemes. They were not enacted all at the same time as one complete and perfect plan, but they have been enacted from time to time as experience has shown the necessity therefor and this is only one of many attempts on the part of shrewd, skillful, designing insurance men to evade the police regulations and provisions of the statutes of the state made for the protection of its citizens.

This case forcibly illustrates the necessity for the most stringent supervision and regulation of the insurance business. It may be safely assumed that each one of these insured citizens of Wisconsin believes that he has bought and holds an insurance policy contract of the kind and with all the rights, remedies and protection provided by the Wisconsin Statutes, while as a matter of fact, he has none of them. The policy is not of the form prescribed by sec. 203.04; the company has not been examined as to its financial responsibility; it has not been licensed; its agents have not been licensed; it has not appointed the insurance commissioner its attorney upon whom legal process can be served, so that if these policy-holders have a loss they cannot sue the company without going to Michigan, so they have none of the safeguards prescribed by the Wisconsin Statutes for their protection.

Under this Chrysler plan, the citizens of Wisconsin buy Chrysler automobiles from the Clark Motor Company in Wisconsin and also buy and pay for this automobile insurance as a part of the purchase price. That is a Wisconsin transaction with a Wis-

consin company, and they have a right to assume when they buy insurance in Wisconsin that they have all of the protection, rights and remedies for its enforcement that are given by the laws of the state. If they had gone to Michigan and bought the automobiles and insurance there, they would then be chargeable with knowledge of the fact that the insurance company might not be licensed to do business in Wisconsin, and if not, then it would not have been examined by the insurance commissioner of Wisconsin and that they would have to go to Michigan to sue on the policy contracts. But here the Wisconsin citizens are purchasing their automobiles in Wisconsin from a Wisconsin corporation and as a part of that purchase, buy and pay for this insurance in Wisconsin, and they have a right to the kind of insurance required by the laws of Wisconsin, and it is the duty of the defendant under the law as insurance commissioner to see that they get it.

The lower court has the right theory of this situation when it says (E. R. 80):

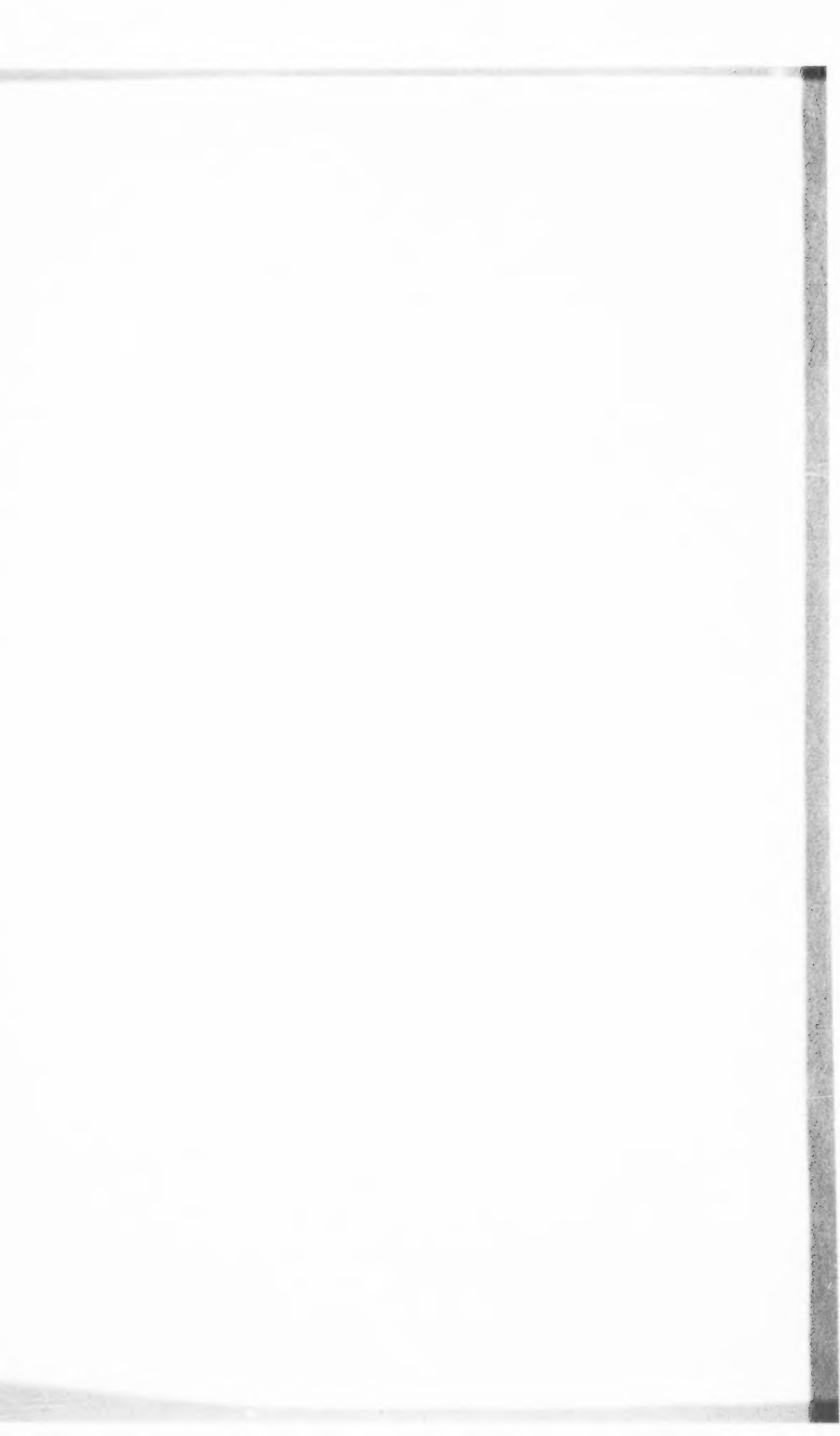
"The fact that the contract in question postpones the existence of any insurance until after the transactions in Wisconsin above outlined differentiates (Fol. 102) the contract here from any in the cases called to our attention or which an independent search has revealed."

On page (T. R. 83) the court says:

"The business done and to be done in Wisconsin under the plan in question in our opinion constitutes the transaction of business within the state and the Palmetto Company is one of those validly required to take out and pay for a license under sec. 201.41 (1) of the Wisconsin Statutes quoted above."

That is our theory of these Wisconsin laws which are intended for the protection of Wisconsin citizens when buying insurance in Wisconsin.

The purpose of and necessity for these regulatory provisions of



The supreme court of Wisconsin said in the case of *Cordy v. Hale*, 177 Wis. 68, at page 71, as to the provisions of the Wisconsin statutes:

“ \* \* \* The license issued by the commissioner of insurance to a foreign corporation to transact business in this state is accepted by the citizen as an assurance from the state that it is solvent and financially sound, and that he is safe in transacting business with any such company whether it relate to insurance on property located within or without the state. \* \* \* .”

Clearly the courts should not enjoin him from furnishing that “assurance” and protection to the citizens of the state.

the statutes of Wisconsin is very clearly and forcibly stated by Justice Winslow in the case of *Rose v. Kimberly & Clark Co.*, 89 Wis. 545, 550, where he says:

"The evil to be corrected is not the writing of a policy by an unlicensed company within this state alone, but the writing of such a policy at all. Bearing in mind the object of the statutes and the evil to be corrected, it is very plain that object will be largely defeated and the evil will flourish as before if it be held that companies without license can establish their agencies just outside of the state line and conduct their business by mail."

The court then says:

"Counsel for respondent seeks to distinguish the foregoing case from the case at bar because the subject of insurance was property in Wisconsin, but <sup>and</sup> difference in principle is perceived. In each the contract attempted to be enforced is against the plain, positive prohibition of the statute. To hold otherwise would be to give foreign insurance companies a decided advantage over residents of this state and practically nullify the statutes passed by the legislature for their protection."

That decision was approved and followed in *Presbyterian Ministers' Fund v. Thomas*, 126 Wis. 281.

This scheme is evidently intended to do the very thing that the court, in that opinion, says the insurance laws of Wisconsin were intended to prevent. That scheme for the protection of citizens of the state includes the appointment of a local agent and the delivery of the policy through him and with his signature thereon and he is required to keep books open to the inspection of the insurance commissioner and the insurance commissioner is required to examine the company as to its responsibility for the protection of the insured citizens of the state, which includes a provision for serving process upon the company in case of its failure to perform the contract. Here the insured has no remedy

in Wisconsin in case of loss. This insurance company in which he holds a certificate of insurance may be absolutely irresponsible so that his insurance protection which he bought as a part consideration for the purchase of his car may be no insurance at all when the loss occurs.

The only thing the insurance commissioner has been threatening to do, as alleged in the complaint, is to require the insurance company to bring itself within the provisions of the statutes so that he can furnish to the citizens of Wisconsin the protection against irresponsible insurance companies, and cheap or worthless insurance contracts that the statutes were intended to furnish him. This scheme was very clearly devised to prevent that supervision and protection and they are here asking this court as a court of equity to protect them in this conspiracy to evade the laws of Wisconsin which are intended to protect the interests of the insured citizens of the state against irresponsible insurance companies and to make it possible for an insured citizen of Wisconsin to enforce his insurance contract in case of loss. Clearly, a court of equity should not become a party to such a conspiracy.

It must be admitted that this Chrysler-Palmetto plan is a very shrewdly devised scheme to evade the regulatory provisions of state statutes and in Wisconsin it cannot be worked without knocking out the principal provisions of the statutes of the state made for the protection of its citizens and for that reason they did not get from the lower court, and should not get here, any technical or strained construction of constitutional or statutory provisions. Appellant has evidently experienced some difficulty in his efforts to perfect this scheme and make it an effective and practical plan for the conduct of its business in defiance of state regulations.

It has made two so-called master policies besides these certificate policies. On or about January 16, 1925 the Palmetto Fire Insurance Company and the Chrysler Sales Corporation entered

into a contract which is usually termed a contract *for insurance* and sometimes called in this case the "master policy." That contract is Exhibit "A" of the Bill of Complaint in this suit (T. R. 16).

On August 4, 1925 the Palmetto Fire Insurance Company and the Chrysler Sales Corporation entered into another contract of insurance or "master policy" which superseded or modified the contract of June 15, 1925 (T. R. 38-44) the superseding and modifying contract by agreement being made retroactive to the effective date of the original contract of June 15, 1925. This new and superseding contract was referred to by counsel for the Palmetto Fire Insurance Company as "Chrysler Palmetto Running Policy." Each of these master policies has in it the form of this certificate policy contract of insurance which is to be sent and delivered by mail by the insurance company to each purchaser of a Chrysler automobile in Wisconsin as his insurance policy contract. It describes itself as "This insurance" (T. R. 30) and is the insurance contract on which the Wisconsin citizens will have to sue in case of loss. Certain provisions in the so-called master policy became a part of it by reference made to it in the certificate.

This master policy provides in general:

(1) That the insurance effected should inure to the benefit of Chrysler Sales Corporation, and of such persons, firms, or corporations, as may have an equity in Chrysler cars because of moneys loaned thereon in connection with the financing of the sale on deferred payments, and of the purchasers of Chrysler cars at retail, the insurance to attach as their interests may appear.

(2) It insures against the hazards of fire and theft for a term of one (1) year all the interests arising upon the sale of each Chrysler car at retail during the term of the said Running Policy.

(3) It is in consideration of the premiums agreed to be paid



by Chrysler Sales Corporation to the Palmetto Fire Insurance Company of Detroit, Michigan.

(4) When the Clark Company in Wisconsin sells a car it is to report the sale to the Chrysler Sales Corporation, giving the name and address of the purchaser and that company reports it to the agent of the insurance company at Detroit and one of these certificate policies of insurance is then to be sent by mail to the purchaser of the car in Wisconsin and the copies are to be sent to the other parties interested in the car, *not on the order of the purchaser of the car but on the duty imposed by this plaintiff under the terms of the master policy.*

(5) In the event of loss, payments are to be made by the insurance company to the owner of the car and to others as their interests may appear.

It is claimed these contracts were made in an attempt to carry out a general plan devised by the Chrysler Sales Corporation for the promotion of sales of its cars in aid of its distributors and dealers, whereby among other articles, devices and equipment, there is included insurance on each car for the purchaser and others as their interests may appear.

We claim if the company is responsible, the business can be done under the Wisconsin laws, but this scheme was deliberately planned to evade the laws.

Under this Chrysler-Palmetto plan, Chrysler cars are shipped to distributors and dealers in Wisconsin and throughout the United States with bill of lading attached. Upon the payment of the draft attached to the bill of lading, the distributor or dealer actually becomes the owner of the car. The bill of lading of the car includes three items: (1) the wholesale price of the car; (2) the government tax on the car; and (3) delivery charge. *This delivery charge includes this fire and theft insurance premium as explained by this plaintiff in a circular letter sent to its distributors and dealers throughout the United States sometime prior to July 1925 and which contains, among other things, the following:*

## INSURANCE

"Effective July 1st, 1925, all Chrysler cars sold will include fire and theft insurance coverage for 100 per cent. of the f. o. b. factory list price, prepaid for one year. Our billing on and after that date against Distributors and Dealers on all Chrysler vehicles shipped by us will include a charge classified on our billing as 'Delivery Charge' and graded as follows:

Chrysler four cylinder open cars.....	\$10.75 net per car
Chrysler four cylinder closed cars.....	12.75 net per car
Chrysler six cylinder open cars.....	16.50 net per car
Chrysler six cylinder closed car.....	18.50 net per car
Commercial car chassis .....	10.75 net per car
Commercial car chassis with body.....	12.75 net per car

"These Delivery charges will be collected by us from Distributors and Dealers on all cars purchased from us and represent that portion of cost to be collected by the Distributor or Dealer from the retail purchaser when making delivery of the new car.

"Distributors will collect Delivery Charges from Dealers when making wholesale deliveries from their stocks to Dealers.

"As this plan will become effective July 1st, 1925, on all cars sold and delivered to purchasers on and after that date, it is very important that Distributors and Dealers send us on July 1st, 1925, a complete inventory, by models and serial numbers, of all Chrysler six and four cylinder cars carried by them in stock, unsold. This inventory should be accompanied by the Distributor's or Dealer's check to cover the 'Delivery Charge' as described above on each Chrysler car carried in stock and included in the inventory.

"The actual 'Delivery Charge' made by us against Distributors and Dealers will be recovered by them from the retail purchaser when making delivery of the new car purchased and must be included by the Distributor or Dealer in the delivered price, to the purchaser.

"Effective July 1st, 1925, therefore, Distributors and Dealers delivered prices of all Chrysler cars is to be increased by the amount of the delivery charge made by us.

## EXAMPLE

"Present delivered price on Chrysler Sedan—List \$1,825.00—Tax \$66.16—Freight and handling, say \$58.84—Net local cash delivered price, \$1,950.00.

"On and after July 1st, 1925, add \$18.50 to present price making local delivered price \$1,968.50," which includes the insurance cost.

The dealer in every instance pays the Chrysler Sales Corporation for all cars shipped to him by taking up the bill of lading as soon as it arrives so that the Chrysler Sales Corporation is paid for the car shortly after the shipment, irrespective of when it may be sold at retail by the dealer.

Obviously, when the Chrysler Sales Corporation thus receives its money for a car and parts with all title or interest therein, it thereupon instantly loses any and all insurable interest in that car.

The so-called "master policy" or agreement between the Chrysler Sales Corporation and the Palmetto Fire Insurance Company contained, among others, the following provision:

1. The Palmetto agreed to insure each car sold by the Chrysler Sales Corporation up to its list price against fire and theft, which insurance was to become effective for a period of one year from date the car was sold at retail by the dealer.

2. On the 15th of each month the Chrysler Sales Corporation agreed to give a statement to the Palmetto of all cars sold at retail during the last preceding 30 days, and to pay thereon under the master policy the agreed premium on these cars.

3. The Palmetto agreed that the insurance on each car should be effective the instant there was a sale of the same at retail, irrespective of the collection by it of any premium for such insurance, relying solely upon the responsibility of the Chrysler Sales Corporation for such premium.

It is to be noted that all cars sold by the Chrysler Sales Cor-

poration are attempted to be covered by insurance under the so-called "master policy" for one year from and after the date of sale by the dealer to the purchaser. The insurance seems to be designed for the benefit of the parties in interest so far as their interests might appear. On the day of the sale to the purchaser and when he takes title all interest theretofore had therein successively by the Chrysler Sales Corporation, the distributor or the dealer as such, is extinguished, and with the extinguishment of such interest goes any insurable interest theretofore had therein—all of which events happen before the contemplated insurance becomes effective or is brought into existence.

In carrying out this plan of insurance, it is provided in the contract or "master policy" that certificates of insurance shall be issued and delivered to the purchasers of Chrysler cars and like duplicate certificates to the finance company or any other person having an interest in these cars. These certificates are to be issued by the Palmetto Fire Insurance Company and delivered to the respective purchasers by mail. Although it is stated in the "master policy" that the issuance and delivery of these certificates are not necessary to make the insurance effective, nevertheless it is provided in the "master policy" that:

*"Insurer (the insurance company) shall issue certificates to purchasers substantially in the form attached hereto which certificates, and insurance evidenced thereby, shall not be subject to cancellation by either party."*

The certificate appears to be a part of the contract or "master policy." The certificate is the only paper or contract or policy that is intended to be delivered to or reach or be placed in the possession of the insured purchaser. It does not contain all of the terms and conditions of the contract as required by the Wisconsin statutes. It certifies, among other things, that the insurance is issued:

"subject to all the conditions, stipulations, provisions, exclusions and warranties *set forth in said policy* (the master policy) *or which appear hereon.*"

So by that reference it makes the provisions of the master policy a part of it. But as to the insured purchaser of the automobile and those interested in the automobile under him, it is the insurance contract, or policy of insurance, delivered in the state of Wisconsin within the meaning of section 201.44 and other provisions of the Wisconsin Statutes and is the insurance policy contract delivered in Wisconsin as found by the lower court and is the contract that the insured resident of Wisconsin would have to sue on in case of loss. Any right that he might have because of provisions in the master policy would be based upon his certificate policy contract.

Neither of those contracts of insurance comply with the standard form of insurance policy contracts required by secs. 203.04 and 203.06 of the Wisconsin statutes.

We understand the plaintiff to contend that under this plan no act is required on the part of a dealer to bring the insurance into effect; that the sale of the car by the dealer brings it into effect—an obvious contradiction. We submit that the Palmetto Fire Insurance Company has, by this contract or "master policy," constituted the dealer in Wisconsin, its agent, to sell this insurance with the sale of each car and to bind its assets to the extent of the insurance on a given car by the very act of making a sale of the car to a purchaser in Wisconsin, and has accepted this act of the dealer as creating a liability on its assets to the extent of the coverage, i. e., the full factory value of the car and for a period of one year from the day the dealer sells the car to the purchaser.

This insurance coverage is for the benefit of the retail purchaser and the holder of the deferred payment indebtedness. It applies to actual retail sales only. Distributors and dealers are required to send a daily record of retail sales deliveries, compiled

on forms supplied by the Chrysler Sales Corporation, to the insurance agents Alexander & Alexander, care of Chrysler Sales Corporation at Detroit, Michigan. The insurance agents then mail the purchaser direct this formal insurance certificate policy contract. Here is a direct connection between the dealer in Wisconsin making the sale of automobiles and insurance and the general agents of the Palmetto Fire Insurance Company.

The purpose of this entire scheme of insurance, as set forth in Exhibit "A" to the Bill of Complaint herein, is as follows:

## "II. PURPOSE

"Chrysler desires to increase the retail sale of Chrysler cars and to obtain for dealers a uniform maximum rate for financing retail sales *and to provide insurance* at a uniform maximum rate throughout the entire United States for the benefit of purchaser or other parties mentioned in the policy and certificates as their respective interests may appear on each Chrysler car purchased at retail. Chrysler proposes to advertise throughout the United States the benefits resulting to purchasers from insurance under policy and certificates issued hereunder. Commercial Credit desires to obtain so far as possible the financing of the retail sales of Chrysler cars. Insurer (Palmetto Fire Insurance Company) desires to obtain insurance in respect to all Chrysler cars sold and leased and delivered at retail to purchasers by dealers throughout the United States during the term of this policy." (Italics ours.)

This tri-party competitive device was, therefore, conceived for the purpose of benefiting *Chrysler, the credit company, and the insurance company*, with the purchaser of the car only as a necessary convenience, the principal object being, we think, to save license fee and state regulation.

This contract or "master policy" is not executed directly between the fire insurance company and the purchaser of a Chrysler car. It is issued directly to the Chrysler Sales Corporation, and

the individual purchasers of the cars throughout the United States are not parties to that contract. The purchaser of a Chrysler car may be entirely ignorant of the existence of the "master policy" until he receives his insurance certificate, or certainly until he has been solicited by a local automobile salesman who represents to him that in the event he purchases a car a fire and theft policy will be issued to him.

In order that the purchaser of a car may have the benefit of this insurance, it is necessary that there shall appear an intermediary in the person of an automobile salesman. This salesman must at some time during the sale of the car represent to the purchaser that the sale of the car includes insurance. He naturally advances this as one of the reasons for the purchase of a Chrysler car. He holds that out as an inducement not possessed by other automobile manufacturers. This must have been the main reason the Chrysler Sales Corporation had in view when it launched the scheme. When a Chrysler dealer sells a car in Wisconsin, several things have to be done in Wisconsin, in order to bring this insurance into force. No citizen of Wisconsin can obtain one of these insurance certificates on property that he owns on his own initiative. The first movement will come from a Chrysler dealer who approaches a citizen of Wisconsin for the purpose of selling him a car. This is the first actual moving part of a contemplated contract. The dealer will have to persuade a citizen of Wisconsin to buy a car. The purchaser will himself have to take a part in this movement. He will have to agree to accept the proposition of the dealer and, in addition, will have to agree to pay the price asked. The offer to sell on the part of the dealer and the agreement to buy on the part of the purchaser, together with his agreement to pay a stipulated price, constitutes a full, definite and completed contract, every step in which must transpire and be effective in the state of Wisconsin. Somewhere wrapped up in this contract of sale and purchase is

the insurance certificate which passes as a part of the property sold to the purchaser and for which the purchaser agrees to and actually does pay as a part of the consideration for the entire purchase. This is true even though the premium for this insurance may have been paid in the first instance by the Chrysler Sales Corporation. While Chrysler voluntarily pays this premium to the insurance company, after he has received it from the distributor or dealer, nevertheless the insurance premium is included in and is a part of the final and ultimate purchase price paid by the purchaser. The transaction is not yet complete. The automobile salesman is then required to report the sale and the name and address of the purchaser to the Chrysler Sales Corporation and then to the insurance agents in the state of Michigan. This reporting movement is also a necessary part of the completed contract and is wholly performed in the state of Wisconsin, and is absolutely required in order to bring the certificate of insurance into existence. The dealer, therefore, sells cars and insurance at one stroke. Without him, the insurance would not and could not be effected under this plan of doing business.

From the revealed facts in this case we submit:

First, that the Palmetto Fire Insurance Company and the Chrysler Sales Corporation have entered into an agreement to insure automobiles located in the state of Wisconsin and to issue and deliver insurance to the residents of the state of Wisconsin upon automobiles in this state, with the intent of evading the laws of the state of Wisconsin enacted for the purpose of supervising, regulating and taxing the business of insurance as affecting the risks located in the state.

Second, that the Palmetto Fire Insurance Company is issuing insurance upon risks located in the state of Wisconsin and to residents of this state with intent to escape from the provisions, restrictions and safeguards imposed by the Wisconsin insurance laws upon companies authorized to do business in this state.



Third, that the Palmetto Fire Insurance Company is defrauding the state of Wisconsin out of the taxes which are rightfully due it under the laws of this state.

Fourth, that the Palmetto Fire Insurance Company, and the Chrysler Sales Corporation, have entered into this agreement to promote the sale of automobiles by a plan subversive of sound insurance as developed by years of experience, and this practice is destructive of the policy of the state of Wisconsin as expressed by laws heretofore enacted for the protection of its citizens.

### **Insurance not commerce**

On the question of an insurance contract, being purely personal in its nature, and on the question of such a contract having no element of commerce, interstate or otherwise, the authorities are collected and digested in the case of *New York Life Insurance Company v. Deer Lodge County*, 231 U.S. 495. The opinion in that case was delivered by Mr. Justice McKenna who, after reciting the facts, reviews the authorities starting with the case of *Paul v. Virginia*, 8 Wall. 168. Justice McKenna, beginning on page 502 and continuing through to page 511, quotes from and reviews a number of cases establishing these two elements as the settled law of this country. The cases considered in this opinion, in addition to *Paul v. Virginia*, are:

*Ducat v. Chicago*, 10 Wall. 410;

*Liverpool Insurance Company v. Massachusetts*, 10 Wall. 566;

*Philadelphia Fire Association v. New York*, 119 U.S. 110;

*Hooper v. California*, 155 U.S. 648;

*Noble v. Mitchell*, 164 U.S. 367;

*New York Life Insurance Company v. Cravens*, 178 U. S. 389;

*Nutting v. Massachusetts*, 183 U.S. 553;

*Equitable Life Society v. Clements*, 140 U.S. 226;  
*Nathan v. Louisiana*, 8 How. 73.

In answer to the attempts made in that *Deer Lodge* case to get the court to change the rule of the case of *Paul v. Virginia* or to limit its scope so as not to apply to that case, the court said at page 510:

"The basis of this contention necessarily is the insistence that the contracts in *Paul v. Virginia* and the succeeding cases were intrastate contracts while the contracts in the case at bar are interstate contracts. But this is a false characterization of the contracts. The decision of the cases is that *contracts of insurance are not commerce at all*, neither state nor interstate." (Italics ours.)

As to the conclusiveness of that rule as the established law of the land at that time, the syllabus says:

"The sanction of the rule of *stare decisis* urges this court against reversing a long series of decisions where state legislation has been enacted in reliance thereon, and the reversal would involve the promulgation of a new rule of constitutional inhibition on state legislation necessitating readjustment of policy and laws."

In *Paul v. Virginia supra*, Justice Field in discussing the insurance contract and interstate commerce used these memorable words:

"Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts of indemnity against loss by fire, entered into between the corporations and the assured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another, and then put

up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not interstate transactions, though the parties may be domiciled in different states. The policies do not take effect—are not executed contracts—until delivered by the agent in Virginia. They are, then, local transactions, and are governed by the local law. They do not constitute a part of the commerce between the States any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York whilst in Virginia would constitute a portion of such commerce."

### **What constitutes doing business**

On the question of what constitutes doing business in a state by a corporation not therein licensed, and particularly of an insurance company of another state not licensed in the state of New York, the case of *Lumbermen's Insurance Company v. Meyer*, 197 U.S. 407, is important. The court, on page 414, said:

"\* \* \* If it be conceded that the contract was made in Philadelphia it does not follow that all its business was therefore done in the state of Pennsylvania. The contract was an insurance policy issued upon real estate and machinery in a building situated in \* \* \* New York. The contract was to pay the amount of loss which might be sustained by fire as specified in the policy. The policy provides for the manner of determining the amount of this loss, either by agreement between the company and the owner, or, in case of disagreement, then by the appraisers as already stated. The provisions of the contract clearly contemplate the presence of an agent of the company at the place of the loss after it has occurred, for the purpose of determining its extent and adjusting, if possible, the amount payable by the company to the owner. If no such adjustment can be made the policy provides in terms for the appointment of appraisers, one by the company and one by the owner, and if they disagree, an umpire shall be appointed, and the agreement of any two shall be binding. After that the loss is payable to the owner by the company within sixty

days. As the policy insures against loss, it of course contemplates that such loss may occur; and it also contemplates that the company shall send to the place where the loss occurred, that is, to New York, its agent, for the purpose stated. When, under the terms of the contract the company sends its agent into the state where the property was insured and where the loss occurred, for the purpose of adjustment, it would seem plain that it was then doing the business contemplated by its contract, within the state. A fire insurance company which issues its policies upon real estate and personal property situated in another state is as much engaged in its business when its agents are there under its authority adjusting the losses covered by its policies as it is when engaged in making contracts to take such risks. *If not doing business, in such case, what is it doing?* It is doing the act provided for in its contract, at the very place where, in case a loss occurred, the company contemplated the act should be done; and it does it in furtherance of the contract and in order to carry out its provisions, and it could not properly be carried out without this act being done; and the contract itself is the very kind of contract which constituted the legal business of the company, and for the purpose of doing which it was incorporated. This is not a sporadic case, nor the contracts in suit the only ones of their kind issued upon property within the state of New York. Many contracts of the nature of the one in suit were entered into by the company covering property within the state. We think it would be somewhat difficult for the defendant to describe what it was doing in New York if it was not doing business therein, when sending its agents into that state to perform the various acts of adjustment provided for by its contracts and made necessary to carry them out.

"We have no difficulty in concluding that the defendant was doing business in the state of New York during all the time of the existence of these policies."

The above opinion was delivered by Mr. Justice Peckham. Under the recited facts, Justice Peckham asks the pertinent query: If the insurance company was not doing business in New

York, what was it doing? The reasoning of Justice Peckham there adopted appealed forcibly to the courts in later cases because it has been entirely followed or the language of his opinion liberally quoted in the following cases:

- Laurentide Company v. Durey*, 231 Fed. 228;  
*Iowa State Traveling Men's Association v. Ruge*, 242  
 Fed. 766;  
*Beach v. Kerr Turbine Company*, 243 Fed. 710;  
*Phillips Co. v. Everett*, 262 Fed. 344.

In *Laurentide Co., Ltd. v. Durey*, *supra*, the complainant, a Canadian corporation, was assessed by the Collector of Internal Revenue on "business done" in the United States. It protested and brought suit to recover the taxes. The question was whether or not the corporation was "doing business." The learned District Judge (Ray), delivering the opinion, said:

"These business transactions were commenced within the United States by soliciting contracts; the making of the contracts by signing was consummated in Canada in part, but the delivery thereof was made in the United States. The corporation sent its goods into the United States and stored them in its own name, retaining and having complete title. It delivered from its own rented warehouses in the United States, and, when payment was made to it by check, it collected such checks in the United States and deposited the proceeds to its own credit in its own bank account in the United States and, as stated, paid all its liabilities incurred in the business done in the United States by checks drawn on such bank account, and therefore made payments completing the various transactions in the United States. True, some of the business connected with these transactions was done in Canada; for instance, the approval of the contracts and the shipping of paper into the United States, and the receipt and indorsement of checks received prior to actual deposit for collection. All the conditions of these contracts were not to be complied with in Canada. The most of them and the more important ones were to be

performed in the United States. Here delivery was to be made, and here the contract was solicited, agreed upon, and signed by the purchaser. Here the Laurentide Company had its property with which to make deliveries in storage at its own expense in its own warehouses—those hired and paid for by it.

"Appropriating the idea of Mr. Justice Peckham expressed in *Pennsylvania Lumbermen's Mutual* \* \* \* (*supra*) I think it would be somewhat difficult for the Laurentide Company, Limited, or its able attorney, to describe what it was doing in the United States, if it was not doing, carrying on, and transacting business therein \* \* \*."

In the case at bar the Chrysler dealer has the car in Wisconsin; he has the title in his own name; it is stored in his own warehouse or place of business; he solicits a purchaser and when the purchaser buys the car, the insurance attaches, whether the purchaser wants the insurance or not. If the dealer failed to tell the purchaser about the insurance, the insurance would attach anyway, but can any one imagine a dealer failing to point out such an important thing in negotiating for the sale of a car, even if it sold for cash or was given away by the dealer.

In *Commercial Mutual Accident Co. v. Davis*, 213 U.S. 245, the Supreme Court said at page 255:

"It is further contended that the defendant company was not doing business within the state of Missouri. That it is essential in order to obtain jurisdiction over a foreign corporation having, as in the case at bar, neither property nor agent in the State, that it be doing business in the State is settled by numerous decisions of this Court., *St. Clair v. Cox*, 106 U.S. 350; *Goldey v. Morning News*, 156 U.S. 518; *Barrow Steamship Company v. Kane*, 170 U.S. 100; *Connecticut Mutual Life Insurance Co. v. Spratley*, 172 U.S. 602; *Conley v. Mathieson Alkali Works*, 190 U.S. 406; *Lumbermen's Insurance Company v. Meyer*, 197 U.S. 407; *Peterson v. Chicago, Rock Island & Pacific Railway Company*, 205 U.S. 364.

"Was the defendant doing business in the State of Missouri? The record discloses, and the Court has found, that it had other insurance policies outstanding in the State of Missouri. Upon these policies undoubtedly premiums were paid, and *it was the right of the company to investigate losses thereunder, to have an examination of the body of the deceased in proper cases, and to do whatever might be necessary to an adjustment or payment of any loss.*"

In *Phillips v. Everett*, *supra*, the Federal Court of Michigan held:

"For the purpose of this case, it is perhaps immaterial where this contract was executed. In the case of *Empire Fuel Co. v. John E. Lyons*, 257 Fed., 890 (C. C. A.), Judge Knappen, in discussing this question, said:

" 'It does not follow from the fact that the contract was made in West Virginia that all business done under it must be regarded as done in that state. \* \* \* *Lumbermen's Ins. Co. v. Meyer*, 197 U. S., 407, 414.' "

In *Connecticut Mutual Life Ins. Co. v. Spratley*, 172 U. S. 602, it was held that an insurance corporation which had been doing business in a foreign State (Tennessee) but after withdrawal, sent an adjuster into the State to adjust a loss under policies written while it was licensed to do business, was still doing business in the State of Tennessee.

In *Pennsylvania v. Equitable Life Society*, 239 Pa. 288, (affirmed by the Supreme Court, 238 U. S. 143) the Supreme Court of Pennsylvania said at page 291:

"In order to determine the question in controversy we must ascertain the source of the premiums which were paid to agencies outside the State. If they were received by the society *from business done within the Commonwealth*, then they were subject to the tax. If they did not come from such business they were not subject to the tax. What, then, is the meaning of the words 'business done within this Commonwealth' as

used in the statute taxing gross premiums of every character and description, received from such business? Manifestly the business in which the society is engaged is that of insuring lives; that is, in furnishing protection to the beneficiaries named in the policies against loss from the death of the insured, to the amount designated in the policy. Furnishing this protection is the business to be done by the society within this Commonwealth, as contemplated by the statute, which fixes the amount of the tax which it, as an insurance company organized under the laws of another State, is to pay for the privilege of entry and doing this business within this Commonwealth, and with our people, its residents. \* \* \* The defendant society does not exist merely for the collection of premiums; that is a mere incident to the great and beneficent purpose for which it exists. When it comes within our borders to do business, it renders a service; it furnishes protection and indemnity to its beneficiaries, residents of the State of Pennsylvania. That is the business which it does in Pennsylvania, and that is the purpose for which it seeks and is granted permission to enter. Furnishing that service, that insurance against loss, it makes a proper charge to cover the cost of the service which it renders, and that charge is the premium. It is simply payment for the valuable service it renders. Whether that service be paid for on the spot where the service is rendered, or whether the amount be remitted to the home office, does not change the character of the business done, and for which recompense or payment is made. If it happens to be made to an agency in Pennsylvania the defendant society admits without question that it is received from business done within this Commonwealth, and is subject to the tax. How can the fact, or the character, of the business done for the benefit of residents of Pennsylvania, be altered or affected in any way, by the manner in which, or the place where, the payment for the business done and the service rendered, is made? Clearly it cannot be so affected."

On the appeal of the above case to the Supreme Court of the United States, *Equitable Life Society v. Pennsylvania*, 238 U.S.,



143, the Supreme Court held that the State of Pennsylvania was not entitled to tax the premiums unless the Company was "doing business" within the State of Pennsylvania. On that phase of the case the Court said at page 146:

*"The question is not what is doing business within a State in such a sense as to lay a foundation for service of process there. It being established that the relation of the foreign company to domestic policyholders constituted doing business within the meaning of the statute, the question is whether the Company may be taxed in respect of it, in this way, whatever it may be called. We are dealing with a corporation that has subjected itself to the jurisdiction of the State; there is no question that the State has a right to tax it and the only doubt is whether it may take this item into account in fixing the figure of the tax. Obviously the limit in that regard is a different matter from the inquiry whether the residence of a policyholder would of itself give jurisdiction over the Company. The argument of the State Court is that the Company is protecting its insured in Pennsylvania equally whether they pay their premiums to the company's agent in Philadelphia or by mail or in person to another in New York.*

*"These are policies of life insurance and according to the statement of the plaintiff in error are kept alive and renewed to residents of Pennsylvania by payments from year to year. The fact that the State could not prevent the contracts, so far as that may be true, has little bearing upon its rights to consider the benefit thus annually extended into Pennsylvania in measuring the value of the privileges that it does grant. We may add that the State profits the Company equally by protecting the lives insured, wherever the premiums are paid. The tax is a tax upon a privilege actually used. The only question concerns the mode of measuring the tax. Flint v. Stone Tracy Co., 220 U.S. 107, 162, 163. As to that a certain latitude must be allowed. It is obvious that many incidents of the contract are likely to be attended to in Pennsylvania such as payment of dividends when received in cash, sending an adjuster into the State in case of dispute, or making proof of death. See Connecticut Mut. Life Ins. Co. v. Spratley, 172 U.S. 602,*

611; *Pennsylvania Lumbermen's Mut. Fire Ins. Co. v. Meyer*, 197 U.S. 407, 415."

In the above case of *Equitable Life Society v. Pennsylvania*, *supra*, and in the case of *Commercial Mutual Accident Co. v. Davis*, *supra*, the important question was what constitutes doing business in a state. It is there held in substance that where an insurance company has the right to investigate losses under a given contract; to have an examination of the body of the deceased (as in the *Davis* case, which in the case at bar would be the right to examine an automobile where a loss was claimed); to do whatever might be necessary to an adjustment or payment of any loss; to attend to many of the incidents of the contract in the state; to send an adjuster into the state in case of dispute to make proof of death under a life insurance policy (or proof of loss of an automobile in the case at bar)—all these things are the best kind of evidence that the insurance company is in truth and in fact "doing business" in the state where the losses occur and where adjustments will have to be made.

The Palmetto Fire Insurance Company under its certificates issued to the purchasers of Chrysler cars in Wisconsin has the right to do all of the above things incident to its business; to adjust its losses in Wisconsin, and must in fact adjust them according to the laws of Wisconsin through agents, appraisers and adjusters acting for the Insurance Company in the State of Wisconsin. Therefore, such rights would bring the case at bar within that line of authorities which holds these and similar acts to be "doing business" in the state.

In the late case of *Fidelity & Deposit Co. v. Tafoya, et al.*, 70 L. ed. 379 (advance sheet), the Court cited at the end of the majority opinion the case of *Palmetto Fire Insurance Co. v. Beha*, C. C. A., Second Circuit, November 10, 1925, in support of the *Fidelity & Deposit* case. It is to be remembered however, that in the *Fidelity & Deposit* case the plaintiff conceded that New

Mexico could regulate everything done within the State but that a foreign insurance company admitted to do business in New Mexico had the right to pay its employes for services rendered outside of New Mexico in soliciting policies that affected property in New Mexico. The plaintiff further conceded that, if the acts for which the corporation commission threatened to cancel the license of the plaintiff had been done within the borders of New Mexico, the license could be cancelled.

So it appears that the *Fidelity & Deposit* case actually turned on the question of payment of services outside the State, and since such transactions were had without the State they could not be regulated by the State. So it was held that the New Mexico statute was unconstitutional.

In citing the opinion of *Palmetto v. Beha, supra*, this court must have relied upon the finding of fact in the opinion that the Palmetto was *not doing business within the State of New York* and that the lower court had correctly applied to such a finding of fact the principle that New York could not regulate business done outside the State of New York. That is further shown by the fact that the *Palmetto v. Beha* case was there cited with *St. Louis Compress Co. v. Arkansas*, 260 U. S. 346, which holds that the State cannot regulate extraterritorial business or tax the same.

In this case the District Court found that the Palmetto Insurance Company was doing business in the State of Wisconsin. Under such facts we submit that neither the *Palmetto v. Beha* case nor the *St. Louis Compress* case could have been cited in the *Fidelity & Deposit* case.

It is held that the place where the last act is done necessary to complete the transaction is the place of the contract.

*McElroy v. Metropolitan Life Insurance Company*, 122 N.W. 27, 84 Neb. 866.

In this case the delivery had to be made in Wisconsin by mail.

*the postal department being the agent of the insurance company for making the delivery, for that was the method of delivery adopted by the insurance company and this plaintiff.*

In *Crutcher v. Kentucky*, 141 U.S. 47, it was sought to regulate the agents of foreign express companies, but the court held because the company was engaged in that business in interstate commerce the state could not regulate. On page 59 of the opinion, the court said:

"The case is entirely different from that of foreign corporations seeking to do a business which does not belong to the regulating power of Congress. *The insurance business, for example, cannot be carried on in a state by a foreign corporation without complying with all the conditions imposed by the legislation of that State.*" (Italics ours.)

A fire insurance company of another state doing business in Kentucky is not entitled to an injunction to restrain enforcement of a state rate law on the ground that it is unconstitutional as depriving plaintiff of property without due process.

*Citizens Insurance Co. v. Clay*, 197 Fed. 435.

In the case of *German Alliance Insurance Company v. Kansas*, 233 U.S. 389, 412, this court discusses at length the character and nature of insurance contracts and business and the right to regulate it. It says, page 412:

"Its personal character certainly does not of itself preclude regulation, for there are many examples of governmental regulation of personal contracts, and in the statutes of every State in the Union superintendence and control over the business of insurance are exercised, varying in details and extent."

The court then enumerates a number of ways in which the insurance business has been regulated and then at pages 412 and 413 says:

"Those regulations exhibit it to be the conception of the law-making bodies of the country without exception that the business of insurance so far affects the public welfare as to invoke and require governmental regulation. \* \* \* We can see, therefore, how it has come to be considered a matter of public concern to regulate it, \* \* \*."

Because of such facts it was held that the liberty of contract guaranteed by the fourteenth amendment is not applicable to such business.

"The insurance business for example, cannot be carried on in a state by a foreign corporation without complying with all the conditions imposed by the legislature of that state."

Constitution of U.S. Revised and Ann. by Payne, 509, 519, citing

*Crutcher v. Railway Co.*, 141 U.S. 59;

*Allgeyer v. Louisiana*, 165 U.S. 578;

*Doyle v. Continental Insurance Co.*, 94 U.S. 535;

*Ducat v. Chicago*, 10 Wall. 410;

*Liverpool Insurance Co. v. Massachusetts*, 10 Wall. 566;

*American Fire Insurance Co. v. King Lumber & Mfg. Co.*, 250 U. S. 2;

*Calker v. Birmingham & N.W. Ry. Co.*, 249 U.S. 522.

Insurance is not commerce between states within the meaning of the constitution so a state may exclude foreign insurance companies from doing insurance business in such state or it may license and regulate it as it sees fit.

8 Fletcher Cyclopedia of Corporations sec. 5776, et seq. p. 9624 et seq.;

1 Joyce Insurance 328 et seq.;

14 R. C. L. 1386;

22 Cyc. 1386;

12 C. J. 1143.

## Wisconsin and Michigan cases

In the case of *Indiana Road Machine Company v. Town of Lake*, 119 Wis. 541, 136 N.W. 178, it is held that the penalty for "doing business" in Wisconsin imposed on foreign corporations failing to comply with section 1770*b*, Stats. 1898, is that

"every contract made by or on behalf of any such foreign corporation, affecting the personal liability thereof or relating to property within the state \* \* \* shall be held void on its behalf and on behalf of its assigns but shall be enforceable against it or them."

An Indiana corporation shipped a machine to one Paul Welbes, chairman of the Town of Lake, in Wisconsin, on the understanding that it was to be purchased by the town. Immediately upon the arrival of the machine in Milwaukee it was delivered to Welbes, who put it to use there for himself. On the evening of the day it arrived the members of the Town Board of the town of Lake made a contract to purchase the machine. The Supreme Court of Wisconsin held that when the contract was entered into the machine was no longer in the possession of the carrier, had ceased to be an object of interstate commerce and had become property within the State. Therefore, the company could not recover on its contract which was void under the statute cited.

In the case of *Loomis v. People's Const. Co.*, 211 Fed. 453, it was held that contracts of a foreign corporation in Wisconsin are void if they affect its personal liability or relate to property within the state and are made before the corporation has complied with the requirements prescribed for "doing business" in the state (Wisconsin statutes, sec. 1770*b*). Such contracts will not be enforced by the Federal Courts. In this case the Reinforced Concrete Pipe Company entered into a contract at Janesville, Wis., with the People's Construction Company for the manufacture of concrete pipe, agreeing to furnish all the forms and

steel reinforcement required for the construction as well as the superintendent, but not the concrete or the labor. The pipe was to be manufactured in Janesville "along the line of sewer construction of said city." The Pipe Company's forms, derrick, saddle and reinforcing material were, for the purpose of this work, shipped to Janesville from outside the state. The Pipe Company had no office or general place of business in Wisconsin. The transaction was held not to be one of interstate commerce. Although it was an isolated transaction the law related to it, the Wisconsin rule being that "a single contract falls within the ban of the statute." The contract was made in Wisconsin and it affected the personal liability of the Pipe Company, hence neither it nor its assignee were entitled to recover.

The reasoning in the above two Wisconsin cases, as applying to the so-called Chrysler-Palmetto insurance policy or contract, is that if the contract or policy of insurance is one "affecting the personal liability" of the foreign non-complying corporation (the Palmetto Insurance Company) then the transaction is "doing business."

In the case of *Sprout, Waldron & Co. v. Amery Mercantile Co.*, 162 Wis. 279, the facts were that a Pennsylvania company not licensed to do business as a foreign corporation, sold an attrition mill to a customer in Wisconsin, under a contract reserving title until the purchase price should be paid. The machinery proved unsatisfactory. A new mill was sent to replace it. Subsequently the corporation entered into a contract with another Wisconsin company for two mills including the one that had been rejected and set aside by the first customer. Complaint in an action against the second company to collect the purchase price of the two machines was dismissed, because the non-authorization of the corporation to do business in the state rendered the contract void. The resale of the old mill was not interstate commerce, but related to "property within the state."

In the case of *Phoenix Nursery Co. v. Trostel*, 166 Wis. 215, the Phoenix Nursery Company, an Illinois corporation, without procuring a license to transact business in Wisconsin, entered into a contract with the defendant whereby it agreed to sell him certain trees and shrubs and to plant them on his premises in Milwaukee according to plans and direction of his landscape architect. The trees as shipped were unsatisfactory and the purchaser refused to pay for them and set up as his defense to the action the failure of plaintiff to comply with the requirements of the statutes as to procuring authority to transact business in the state. The Supreme Court of Wisconsin sustained the defendant's contention and held the contract void.

In the case of *Wisconsin Trust Company v. Munday*, 168 Wis. 31, deeds for real estate located in Wisconsin, worth between \$60,000 and \$75,000 were given to the Realty Realization Company, a Maine Corporation, on February 28, 1913, at which time the company had not complied with the provisions of section 1770*b*, Stats. Through various conveyances, the property attempted to be conveyed was used as security for a loan of \$40,000 made by the La Salle Street Trust & Savings Bank. It was claimed that the failure of the Realty Realization Company to comply with this statute did not render the deeds absolutely void for three reasons: (1) The business was not transacted in Wisconsin; (2) the transaction was interstate in character; and (3) the statute applies only to bilateral and executory agreements, and does not apply to executed contracts. The court, however, holds otherwise. It says in part:

"Certainly the deeds in question are within the terms of this statute, for they clearly relate to property within this state. In the consideration of this case we regard as immaterial the fact that the contract was negotiated in the state of Illinois. No matter where negotiated, it was a transaction relating to property within this state, and under familiar principles its validity must be determined in accordance with the laws of



this state. But it is claimed that because the business was transacted in the state of Illinois it is interstate in character because as a part of the transaction the Wisconsin owner of the real estate in question received 50 shares of the common stock of the Maine corporation, and by the terms of the contract was to receive 700 shares of the preferred stock of the corporation. \* \* \* We see no circumstances connected with this transaction from which it may be inferred that it was interstate in character. \* \* \* Nearly every deed or conveyance is given pursuant to an antecedent contract written or oral and if the statute should be held not to apply to a deed given in performance of such antecedent contract, its purpose would be defeated. While the statute is in many respects a harsh one, it has nevertheless been upheld repeatedly by this court, and thereafter reconsidered by the Legislature in some of its aspects, and no change has been made to avoid or modify the interpretation placed upon it by the court. \* \* \* Upon the authority of the prior decisions of this court we must hold that the deeds given by the Wisconsin Trust Company and Frederick Robinson to the Realty Realization Company are absolutely and wholly void as to the Realty Realization Company and its grantees."

On the appeal of the above case to this court and in *Munday v. Wisconsin Trust Co., et al.*, 252 U. S. 499, it was argued that the above holding conflicted with the due process clause of the Federal Constitution; but this court there said:

"Where interstate commerce is not directly affected, a state may forbid foreign corporations from doing business or acquiring property within her borders except upon such terms as those prescribed by the Wisconsin statute. \* \* \* No interstate commerce was directly involved in the transactions here questioned. Moreover, this court long ago declared: 'The title to land can be acquired and lost only in the manner prescribed by the law of the place where such land is situated.' "

In the case of *State ex rel. Goldwyn Distributing Corporation v. Gehrz*, 181 Wis. 238, 194 N.W. 418, the court held that un-

licensed foreign corporations cannot resort to state courts. In an action by an unlicensed foreign corporation against a licensed foreign corporation for breach of a contract, made in New York, concerning the leasing of real estate there, and the breach occurring, if at all, in New York, the Supreme Court of Wisconsin held that since there was no question of interstate commerce involved, the non-resident, non-complying foreign corporation could assert no constitutional right to resort to the courts of Wisconsin for original redress. Under sections 1770b-1770d, Stats. the corporation for default in obtaining a license is absolutely prohibited from transacting any business in the state and there is plainly indicated a public policy which authorizes and justifies a denial of the use of the courts to settle the controversy presented.

In the case of *Republic Acceptance Corp. v. Bennett*, 189 N. W. 901 (a Michigan case), the plaintiff, a foreign corporation, was engaged in the business of purchasing or discounting securities obtained on the sale of motor vehicles. It maintained a branch office at Detroit and employed a manager to take charge thereof. Through him and others sent to assist him, it solicited and obtained a large amount of business, furnished the blanks on which securities and assignments were written, secured investigation of the financial standing of customers and made payments of the consideration. The Michigan court held that this was "doing business" in the state and no recovery could be had on the contracts because of the failure of the corporation to qualify under the Michigan statutes. The fact that the contracts were subject to the approval of the home office, outside the state, did not impress on these contracts the characteristics of a transaction in interstate commerce.

"All the negotiations leading up to the purchase of the securities were conducted in Detroit. The assignments and guaranties were executed there and delivered to the plaintiff's

manager. He sent them to Pittsburgh for approval, and after such approval, the transaction, which had hitherto been but a proposal on the part of the defendants, became a binding contract by the delivery of plaintiff's check to the defendants at Detroit in payment of the consideration therefor. The contract clearly was made in this state and subject to the applicable provisions of the statute."

### **Insurance contracts—police power**

Contracts of insurance fall within the police powers of the state and may be regulated in the interests and for the protection of the public.

32 C. J. 983 and cases;

12 C. J. sec. 432, Note 96;

22 Cyc. 1386 and cases.

The police power comprehends all those general laws of internal regulation necessary to secure peace, good order, health, and the comfort of society, private interests being subservient to the general interests of the community.

Constitution of the United States Revised and Annotated by  
Payne, 310, citing

*Slaughterhouse Cases*, 16 Wall. 62;

*Munn v. Illinois*, 94 U. S. 125;

*Patterson v. Kentucky*, 97 U.S. 504;

*Cotting v. Kansas City Stockyards Co.*, 183 U. S. 84.

All contracts are inherently subject to the paramount police power of the sovereign the exercise of which is never understood to involve their violation within the meaning of the obligation clause of the constitution.

Constitution of the United States Revised and Amended by  
Payne 309 and cases.

"There are some kinds of business not confined to the States which are yet not within the classification of interstate commerce and which accordingly Congress has no power to regulate. *Among these is the business of insurance.* It has been held that issuing a policy of fire insurance was not a transaction of commerce; neither is marine insurance, nor life insurance." (*Italics ours.*)

Constitution of United States Revised and Annotated, 1924,  
p. 141, citing

*Paul v. Virginia*, 8 Wall. 168;  
*Hooper v. California*, 155 U.S. 648;  
*New York Life v. Cravens*, 178 U.S. 389;  
*New York Life v. Deer Lodge County*, 231 U.S. 495;  
*Ducat v. Chicago*, 10 Wall. 410;  
*Philadelphia Fire Assn. v. New York*, 119 U.S. 110;  
*Equitable Life v. Clements*, 140 U.S. 226;  
*Noble v. Mitchell*, 164 U.S. 367;  
*Mutual Life v. Cohen*, 179 U.S. 262;  
*Mutual Life v. Hill*, 193 U.S. 551;  
*Northwestern Life v. McCue*, 223 U.S. 234;  
*Actna Life v. Moore*, 231 U.S. 543;  
*Provident Sav. Soc. v. Kentucky*, 239 U.S. 103;  
*Northwestern Life v. Wisconsin*, 247 U.S. 132.

"Consistent with the power of congress to regulate commerce the state possesses because it was reserved, the power to protect the public health, the public morals and the public safety by any legislation appropriate to that end which does not encroach upon rights guaranteed by the national constitution nor conflict with acts of congress."

Constitution of United States Revised and Annotated, 146,  
citing

*Missouri, etc., R. Co. v. Haber*, 169 U.S. 628;  
*Sioux Remedy Co. v. Cope*, 235 U.S. 197;  
*McLean v. Denver, etc. R. Co.*, 203 U.S. 38;  
*Houston, etc. R. Co. v. Mayes*, 201 U.S. 321;

*Bowman v. Chicago, etc. R. Co.*, 125 U.S. 489;  
*Robbins v. Shelby County*, 120 U.S. 493;  
*Gloucester Ferry Co. v. Pennsylvania*, 114 U.S. 215;  
*Railroad Co. v. Husen*, 95 U.S. 470;  
*Lake Shore, etc. R. Co. v. Ohio*, 173 U.S. 202;  
*New York v. Miln*, 11 Pet. 138.

"A State may make valid enactments in the exercise of its legislative power to promote the welfare and convenience of its citizens, although in their operation they may have an effect upon interstate commerce."

Constitution of United States Revised and Annotated (1924)  
 147 and cases.

"The business of insurance is *quasi* public in character and the right to engage in it is a franchise at least so far as corporations are concerned and accordingly it is competent for the state, either under its police power or as creator or controller of corporations, to determine who may engage in the business within its boundaries and to prescribe terms and conditions on which the business can be conducted and generally to regulate the business \* \* \*."

32 C. J. 981 and cases too numerous to cite here, which include the case of *Welch v. Fire Ass'n.*, 120 Wis. 456, establishing that rule in Wisconsin.

The state may lawfully require insurance corporations to obtain a license before doing business and pay a license tax and may require the deposit of a fund with the state superintendent of insurance for the security of policy holders and make other regulations and restrictions.

32 C. J. 982.

Among other things the legislature may prescribe a standard form of policy.

32 C. J. 983.

In 12 C. J. sec. 440 the author, after quoting the fourteenth amendment, says:

"\* \* \* It does not deprive the states of their police power, however; and, subject to the limitations expressed therein, the states may continue to exercise their police powers as fully as before the adoption of the amendment."

The author then cites a long list of cases and in sec. 441, after referring to that rule and its limitations, says:

"In order that a statute or ordinance may be sustained as an exercise of the police power, the courts must be able to see that the enactment has for its object the prevention of some offense or *manifest evil* or the preservation of the public health, safety, morals, or *general welfare*, that there is some clear, real and substantial connection between the assumed purpose of the enactment and the actual provisions thereof, \* \* \*." (Italics ours.)

There can be no question about the "manifest evil" that the Wisconsin statutes were intended to prevent and the "general welfare" that was intended to be protected. That was stressed in the case of *Rose v. Kimberly & Clark Co.*, 89 Wis. 545, 550.

Neither the fourteenth amendment nor any other amendment was designed to interfere with the powers of the state; sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people and to regulate so as to increase the industries of the state, develop its resources and add to its health and property.

*Barbier v. Connolly*, 113 U.S. 27.

The fourteenth amendment was not intended to hamper or to authorize the courts to interfere with the state's exercise of its police powers to regulate and promote the morals, health and safety of her citizens.

*State v. Legendre*, 138 La. 154.

The legislature of a state, unlike congress, has all the power of legislation from which it is not prohibited by express words of the constitution or by necessary implications therefrom, and the unconstitutionality of a statute must be clear and manifest before a court should declare it unconstitutional, and if there be any reasonable doubt on the subject, the law should be upheld.

*Northwestern National Bank v. Superior*, 103 Wis. 43.

### **State control of foreign companies**

An insurance company doing business in another state is subject to the laws of that state as to such business.

*N.Y. Life Ins. Co. v. Fletcher*, 117 U.S. 519.

Corporations doing marine insurance may, like other companies, be entirely excluded from doing business in a state.

*Hooper v. California*, 155 U.S. 648.

A state may impose conditions not in conflict with the constitution or laws of the United States on business within its territory of an insurance company chartered by another state or may exclude such company from its territory, or if it has given a license, it may revoke such license.

*Doyle v. Continental Ins. Co.*, 94 U.S. 535, 536;

and list of cases cited in

3 Digest U.S. Sup. Ct. Rp. 3406.

A law of a state requiring insurance companies of other states to file security or take out a license or pay a specific tax or fee and percentage before they can issue policies in the state is held to be constitutional.

*Home Ins. Co. v. Augusta*, 93 U.S. 116;

*Postal Telegraph C. Co. v. Charleston*, 153 U.S. 692.

The fourteenth amendment does not prohibit the state from imposing such conditions upon foreign corporations as it may choose as a condition of their admission within its limits.

*Norfolk & W. R. Co. v. Penn.*, 136 U.S. 114;

*Tolerton & Stetson Co. v. Barch.*, 84 Minn. 497, 88 N.W. 19;

*Philadelphia Fire Ass'n v. N.Y.*, 119 U.S. 110.

Where an insurance policy is delivered, that is the locus of the contract and a suit can only be brought on the contract as contained in the policy.

*Keim v. Home Mutual Fire and Marine Ins. Co. of St. Louis*, 97 Am. Dec. 291.

### **Where this insurance contract is delivered**

This is not the case of an ordinary purchase of goods by a mail order in which, under the general rule, the buyer makes the postal department his agent for carrying and delivering the letter and also makes the railroad his agent for the purpose of bringing the goods back to him, which makes the delivery at the place of shipment.

In this case, the certificate had to be sent by the insurance company to the purchaser, not on his order or at his request, but because of the contract duty of the insurance company to send to the purchaser this certificate insurance contract when notified by the Chrysler Sales Corporation, which makes the postal department the agent of the insurance company for the purpose of delivering said policy to the purchaser of the car, so that the delivery of the certificate insurance contract is not complete within the terms of the master policy until delivered in Wisconsin and the provision in the contract that if the certificate should fail to reach the purchaser of the car, that the insurance company



would still be liable, does not change this rule, because if the purchaser of the car sued, in case of loss, he would have to sue on the certificate policy and prove that in order to recover, so that provision would only be a substituted form of delivery.

*G. A. Gray Co. v. Taylor Bros. Iron Works*, 66 Fed. 686.

### Jurisdiction

*It is a fundamental rule of law that neither a sovereign, nor its public officers as such, can be sued in its own courts, or in any other courts, unless the sovereign has given its express voluntary permission and consent thus to be sued. This immunity from suit is possessed by the several states and preserved to them by the eleventh amendment to the United States constitution, which prevents the bringing of suits against them either in the state or federal courts.*

A discussion of the above principle is contained at length in the case of *Fitz v. McGhee*, 172 U.S. 516. In that case the receivers of a railroad brought suit against the attorney general and the solicitor of the state of Alabama to restrain them as officers of the state from taking steps to enforce the provisions of a law of that state reducing the tolls on a bridge owned by the railroad. It was held that this was a suit against the state and the legislature not having granted any express permission for such a suit, it could not lie. Mr. Justice Harlan delivered the opinion of the court, reviewed former decisions and discussed at some length the principle involved. The discussion starts on page 525 and continues through the opinion, the crux of the opinion being that there is a wide difference between a suit against individuals holding official positions under a state to prevent them, under the sanction of an unconstitutional statute, from committing by some positive act a wrong or trespass, and the suit against officers of

a state merely to test the constitutionality of a state statute, in the enforcement of which those officers will act only by formal judicial proceedings in the courts of the state. It was held that under the first of the above theories, the officers could be enjoined from proceeding, but under the second they could not. It was conceded that one against whom an action was threatened could raise the constitutionality of the statute under which the action was threatened or started in a proper proceeding—that proper proceeding being in the court where the party raising the question was a defendant.

The theory of this case is that a person or corporation cannot enjoin the state officers from acting under the statutes of the state where the officers propose to act only by formal judicial proceedings in the courts of the state.

The eleventh amendment of the United States constitution is as follows:

“The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign State.”

In the case of *Beers v. State of Arkansas*, 20 How. (U.S.) 527, the court said:

“It is an established principle of Jurisprudence in all civilized nations, that the Sovereign cannot be sued in its own courts, or in any other, without its consent and permission.”

Likewise, in the case of *Nichols v. U. S.*, 7 Wall. 122, the court said:

“Every Government has an inherent right to protect itself against suit, and if, in the liberality of legislation, they are permitted, it is only on such terms and conditions as are prescribed by statute. The principle is fundamentally applied to every Sovereign power and but for the protection which it

affords, the Government would be unable to perform the various duties for which it was created."

The very basis of all state statutory legislation referring to insurance companies, rests entirely upon the fundamental proposition that the business of insurance is affected with a public interest, and therefore is a proper subject for the exercise of the police power of the state.

*German Alliance Insurance Co. v. Kansas*, 233 U.S. 389.

In the case of the *German Alliance Insurance Company v. Hale*, 219 U.S. 307, the Supreme Court said at the bottom of page 316:

"They (regulations) are enacted under the power with which the States have *never* parted, of caring for the *common good* within the limits of constitutional authority. Insurance companies, indeed all corporations, associations and individuals, within the jurisdiction of a State, are subject to such regulations, in respect to their relative rights and duties, as the State may, in the exercise of its police power and in harmony with its own and the Federal Constitution, prescribe for the public convenience and the general good. *Jacobson v. Massachusetts*, 197 U.S. 11, 27, 31; *Lake Shore, etc., v. Ohio*, 173 U.S., 285, 297; *House v. Mayes*, *ante*, p. 270 \* \* \* It was for the State, keeping within the limits of its constitutional powers to say what particular means it would prescribe for the protection of the public in such matters."

Thus, the power to deal with insurance companies is a sovereign power which has, at all times, reposed in the sovereign state of Wisconsin ready to be exercised at the will of the sovereign and in the manner willed by the sovereign.

The sovereign has now exercised its will by the enactment of certain state insurance laws.

In the case of *Providence etc. Co. v. Virginia Fire Insurance Co.*, 11 Fed. 284, the court, at page 287 said:

"The Insurance Superintendent is a public officer of the state, created by the statute, and charged with the execution of the laws in relation to insurance."

### **The Allgeyer case**

This scheme was apparently designed for the express purpose of evading the provisions of the Wisconsin statute and the statutory limitations in other states, and it was claimed in the lower court to be justified by the decisions of the supreme court in the case of *Allgeyer v. Louisiana*, 165 U.S. 578, but we think this scheme presents just the opposite of the *Allgeyer* case. In that case Allgeyer was a resident of Louisiana, but while in New York, he secured from the Atlantic Mutual Insurance Company of New York a so-called master policy contract of insurance on cotton to be shipped to ports in Europe.

When Allgeyer so shipped cotton, he drew a bill of exchange against the purchaser attaching to the same bill of lading for the cotton and an order on the Atlantic Mutual Insurance Company for a separate insurance policy contract as provided for in the master policy to be delivered in New York on presentation of the order issued on the insurance company. The insurance company in New York on such order issued and delivered to the holder of the exchange and order in New York as Allgeyer's agent, the separate policy or certificate of insurance on the cotton in accordance with the master policy contract. There the new separate policy contract as well as the so-called master policy contract was delivered in New York, the separate policy contract being so delivered to the holder of the bill of exchange in New York. The holder of the bill of exchange in New York became the owner of the cotton covered by the bill of lading attached and was the owner of the policy of insurance covering the same, which was so issued and delivered complete in New York and the court held that the contract of insurance being so made and delivered

in New York by an insurance company of the state of New York where the premiums were paid and where the losses, if any, were to be paid, was just as absolutely a New York insurance as if Allgeyer had gone to New York in person and received the policy there as he did the master policy. In this case, according to this contract, this insurance policy or certificate contract of insurance is to be issued and sent by mail by the insurance company from Detroit to the purchaser of the car in Wisconsin, not on his order or at his request but on notice by the Chrysler Sales Corporation because of a contract duty imposed upon the insurance company by the Chrysler Sales Corporation which makes the postal department the agent of the insurance company to deliver that insurance policy to the purchaser of the car in Wisconsin.

In the *Allgeyer* case, both the master policy and the certificate policy were issued and delivered in New York, while here, this certificate contract of insurance which is the actual insurance policy as to the insured citizen of Wisconsin, is drawn in Detroit but delivered to the purchaser of the car in Wisconsin through the postal department which is the agent of the insurance company in the delivery of the policy in the performance of the duty imposed upon the insurance company by the provisions of the master policy, so-called which required the insurance company to send and deliver the separate insurance policy contract to the purchaser of each car in Wisconsin when notified of the name and address of such purchaser.

Clearly, the *Allgeyer* case should not be permitted to be used by this plaintiff or by its insurance company as a justification of its wholesale manner of carrying on this insurance business in the state of Wisconsin in defiance of its laws which were designed for the protection of its citizens against wildcat insurance schemes by irresponsible, unexamined, uncontrolled and unlicensed insurance companies, for the more irresponsible an insurance

company is, the more attractive insurance contracts it can make. If this insurance company can evade the laws of Wisconsin in this way, then every other insurance company can do business in the same way. If the insurance commissioner has no supervision over it and can make no investigation as to the responsibility of the company or the honesty of its scheme of insurance, then there is no way for a state to protect its citizens against fraud by irresponsible insurance companies or worthless insurance contracts, although that is a well recognized police power of the state. The court should not lend itself to a scheme like this to evade the laws of the state which the legislature has deemed reasonable and necessary for the protection of its citizen.

Of course, the right of a citizen or resident of Wisconsin to purchase insurance anywhere in the country is a constitutional right guaranteed to the citizen. A citizen of Wisconsin may go to Michigan and there make a contract with a foreign insurance corporation and Wisconsin can have no control over such a contract. A citizen of Wisconsin may use, in another state, any agency he desires for the purpose of purchasing insurance in that state. He may send a message or write a letter to an insurance corporation in another state and thereby purchase insurance, or he may employ an agent in another state to purchase insurance for him. So long as the company with which he is dealing does not come within the state in person or by agent (as in this case by the postal department) to do such business of insurance in this state or to perform any act in perfecting such a contract of insurance or in adjusting a loss here, it may deal with our citizens.

But the moment a foreign insurance corporation comes into the state to deal with a citizen or resident for the purpose of effecting a contract of insurance or if it issues a policy in another state on property located in Wisconsin by the terms or conditions of which a loss, if any should accrue, must be adjusted in the state, it is doing the business of insurance in Wisconsin.

*Lumbermen's Ins. Co. v. Meyer, supra.*

In this case the Palmetto Fire Insurance Company has entered into a tripartite agreement containing a plan through and by which it is enabled to have done for it in the State of Wisconsin all of the things a domestic company or an admitted company can do in the State to sell fire and theft insurance and to collect the premiums thereupon and adjust the losses resulting under the insurance effected, and the things are done for it in the State by residents of the State. Without the doing of such things in the State it could not carry out the agreement it has made with the Chrysler Company.

We submit the principle we are contending for in this case is clearly recognized by this Court in the *Allgeyer* case, *supra*, in the following language at page 583:

"There is no doubt of the power of the state to prohibit foreign insurance companies from doing business within its limits. *The state can impose such conditions as it pleases upon the doing of any business by those companies within its borders, and unless the conditions be complied with, the prohibition may be absolute.*"

### **Corporations, status of**

While corporations are persons for many purposes, they are not citizens of the United States within the meaning of sec. 1 art. XIV of the United States Constitution, which provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

That language is very specific—"all persons born or naturalized," excludes the idea of a corporation.

The lower court did not discuss this feature of the case at length because it sustained the statutes under the police power to regulate insurance, but the opinion of the court, on page 583, recognizes that as the general rule in the following language:

"There is no doubt of the power of the state to prohibit foreign insurance companies from doing business within its limits. The state can impose such conditions as it pleases upon the doing of any business by those companies within its borders and unless the conditions be complied with, the prohibition may be absolute."

We will again brief this question at length here because we think the statutes may be sustained on either or both grounds. All of the large text writers give that as the effect of the constitutional provision as construed by the courts.

"Corporations are not citizens within the meaning of this clause (Fourteenth Amendment). The term citizens as there used applies only to natural persons, members of body politic owing allegiance to the State, not to artificial persons created by the legislature and possessing only the attributes which the legislature has prescribed."

Constitution of United States Revised and Annotated, 509, citing

*Paul v. Virginia*, 8 Wall. 177;

*Blake v. McClung*, 172 U.S. 239;

*Norfolk, etc. R. Co. v. Pennsylvania*, 136 U.S. 114;

*Waters-Pierce Oil Co. v. Texas*, 177 U.S. 28;

*Augusta Bank v. Earle*, 13 Pet. 586.

"The insurance business, for example, cannot be carried on in a State by a foreign corporation without complying with all the conditions imposed by the legislation of that State."



Constitution of United States Revised and Annotated 510,  
citing

*Crutcher v. Kentucky*, 141 U.S. 59;

*Allgeyer v. Louisiana*, 165 U.S. 583;

*Doyle v. Continental Ins. Co.*, 94 U.S. 540;

*Ducat v. Chicago*, 10 Wall. 410;

*Liverpool Ins. Co. v. Massachusetts*, 10 Wall. 573;

*American Ins. Co. v. King Lbr. etc., Co.*, 250 U.S. 2;

*Chalker v. Birmingham, etc., R. Co.*, 249 U.S. 522.

See also Constitution of United States Revised and Annotated, page 141 and cases.

The insurance business so affects the public interests that it justifies legislative regulation, and because of such fact the liberty of contract guaranteed by the fourteenth amendment is not applicable. The wisdom of such a law is for the legislature; the court can only inquire as to the power of the legislature to act on the subject.

*German Alliance Ins. Co. v. Kansas*, 233 U.S. 389.

It is a well established principle of law that a corporation, being a mere creation of a particular state has no power or right to act or do business outside of that state except with the consent, express or implied, of such other state. A corporation is not a "person born or naturalized" within the meaning of the fourteenth amendment guaranteeing equal protection of the laws and the law of comity of states does not apply where there is an express statutory provision like the insurance laws of Wisconsin, expressly prohibiting it.

8 Fletcher Cyclopedia of Corporations, sec. 5734, *et seq.*

As to insurance corporations, see

8 Fletcher Cyclopedia of Corporations, sec. 5776, *et seq.*

22 Cyc., 1386-1391, *et seq.*;

32 C. J. page 951, *et seq.*;

1 Joyce on Insurance, 328, *et seq.*

"\* \* \* It is a settled principle of constitutional law that a corporation is not a citizen within the meaning of that clause of the constitution of the United States which declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.' "

10 Cyclopaedia of Law and Procedure, 150;

*Ducat v. Chicago*, 48 Ill. 172, 95 Am. Dec. 529;

*Tatem v. Wright*, 23 N. J. L. 429;

*People v. Imlay*, 20 Barb. (N.Y.) 68;

*Wheeden v. Camden, etc. R. Etc., Co.*, 2 Phila. (Pa.) 23.

"A corporation is not a 'citizen' within the meaning of constitutional provisions which forbid the grant to any citizen or class of citizens of privileges not equally open to all citizens. In fact, the corporate charter itself and all the powers conferred on the corporation as such are in the nature of special privileges not possessed by individuals, and it is within the police power of the legislature to grant a large measure of powers to corporations without infringing constitutional provisions forbidding the grant of special privileges to some persons that are not open to others. \* \* \*."

12 C. J. 1113;

*In re Wyoming Valley Co-op. Assoc.*, 198 Fed. 436;

*Anglo-California Bank v. Field*, 146 Cal. 644.

"A corporation not being a citizen within the meaning either of the constitution as originally adopted or of the fourteenth amendment, it follows that a state may prohibit foreign corporations from doing business within its boundaries or may grant such privilege on such conditions as it deems best, and may likewise impose certain conditions on the right of a foreign corporation to sue in its courts."

12 C. J. 1121.

It is true that the state may regulate the activities of foreign corporations within the state.

*St. Louis Cotton Compress Co. v. Arkansas*, 260 U.S. 346,  
67 L. Ed. 297, 34 Sup. Ct. 125.  
*Selover v. Walsh*, 226 U.S., 112;  
*Ducat v. Chicago*, 10 Wal. 410, 19 L. ed. 972;  
*Wilson-Moline Buggy Co. v. Hawkins*, 80 Kan. 117, 101  
P 1009.

The business of insurance is *quasi* public in character and the right to engage in it is a franchise, at least so far as corporations are concerned, and accordingly, it is competent for the state, either under its police power or as creator or controller of corporations to determine who may engage in the business within its boundaries and to prescribe terms and conditions on which the business may be conducted, and generally to regulate the business and all persons engaged in it whether as individuals, partnerships, voluntary associations or corporations.

32 C. J. 981;  
*National Union F. Ins. Co. v. Wanberg*, 42 S. Ct. 32;  
*German Alliance Ins. Co. v. Kansas*, 233 U.S. 389;  
*John Hancock Mut. L. Ins. Co. v. Warren*, 181 U.S. 73.  
*Doyle v. Continental Ins. Co.*, 94 U.S. 535, 542;  
*Security Mutual Ins. Co. v. Prewitt*, 202 U.S. 246, 257.

Contracts of insurance fall within the police power of the state and may be regulated in the interests of the public.

32 C. J. 983;  
*Gen. Acc. Assur. Co. v. Walker*, 99 Miss. 404, 55 So. 51;  
*Verducci v. Casualty Co. of America*, 96 Ohio St. 260,  
117 N.E. 235.

The state has power either to wholly exclude a foreign insurance company from doing business within its limits or to impose

on the company such terms and conditions as it may deem proper as a condition precedent to its right to do business within the state. A state having the power to exclude foreign companies entirely, has the power to change the condition of admission at any time for the future.

32 C. J. 989;

*Whitfield v. Aetna L. Ins. Co.*, 205 U.S. 489, 27 S. Ct. 578;

*Philadelphia F. Assoc. v. New York*, 119 U.S. 110, 7 S. Ct. 108.

If there are specific provisions as to foreign companies, such companies may do business in the state only on compliance with such conditions.

32 C. J. 991;

*Mitchell v. National Surety Co.*, 206 Fed. 807;

*Fletcher v. New York L. Ins. Co.*, 13 Fed. 526.

Owing to the power of a state absolutely to exclude foreign corporations from its boundaries, it may prescribe such conditions of admission not in conflict with the Federal Constitution as it desires.

14 R. C. L. 861;

*Doyle v. Continental Ins. Co.*, 94 U.S. 535, 24 U.S. (L. ed.) 148;

*Allgeyer v. Louisiana*, 165 U.S. 578, 17 S. Ct. 427, 41 U.S. (L. ed.) 832;

*Noble v. Mitchell*, 100 Ala. 519.

“\* \* \* It is uniformly held that a foreign corporation has no absolute right of recognition in other states, that it depends for its recognition and the enforcement of its contracts upon their assents, and a state is not prohibited from discriminating in the privileges it may grant to foreign corporations as a condition of their doing business within its limits. \* \* \* ”

*Scottish Union & National Ins. Co. v. Herriott*, 80 N. W. 665, 667 and cases.

*In the case of St. Louis & S. F. R. Co. v. Cross*, 171 Fed. 480, the court said, page 488:

"\* \* \* Undoubtedly it is a general rule that foreign corporations enter a state to carry on business therein by comity only, and that a state may at will exclude them, admit them on conditions, or terminate its permission once given to continue such business."

That is especially true as to foreign insurance companies because of the character of the business they do. It was held, *Security Mut. Life Ins. Co. v. Prewitt*, 202 U. S. 246, 26 Sup. Ct. 619, 50 L. Ed. 1013, that because

"a state has power to refuse permission to a foreign insurance company to do business at all within its confines, and as it has power to withhold that permission once given, without stating any reason for its action, the fact that it may give what some may think a poor reason or none for a valid act is immaterial."

"It is well established that this state (Wisconsin) has the right to impose conditions upon foreign insurance companies doing business here when such conditions are not in conflict with the constitution or laws of the United States. \* \* \*."

*Presbyterian Ministers' Fund v. Thomas*, 126 Wis. 281, 284, and cases.

"\* \* \* We are aware of no rule of comity which requires our courts to enforce the contract of a foreign corporation with a resident of this state in conflict with the letter and policy of our laws, whether the contract be made within or without the state. \* \* \*."

*Presbyterian Ministers' Fund v. Thomas*, 126 Wis. 281, 285, and cases.

"\* \* \* The rule of comity claimed by respondent would place

foreign corporations on more favorable ground in the transaction of insurance business with residents of this state than domestic corporations and foreign corporations duly licensed. The rule of comity does not go to this extent."

*Id.* at 285, and cases.

Appellant has questioned the constitutionality of the Wisconsin statutes, but it has been held that a foreign corporation has no right to challenge the constitutionality of a state statute which regulates its admission into the state, and it is immaterial how onerous or even impossible the condition on which the original admission of a foreign corporation depends, since, in any event, no right of such corporation can possibly be invoked. That is because all the right a foreign corporation has to do business in a state must be found in whatever law the legislative assembly passes in that behalf, and even if such law would be unconstitutional, if attacked by a citizen of the state, still it would avail a foreign corporation nothing to attack it, as such corporation is not a citizen entitled to all privileges and immunities of citizens in the several states.

12 R. C. L. 62;

*Munday v. Wis. Trust Co.*, 252 U.S. 499.

This Wisconsin corporation as a sales corporation cannot force this foreign insurance company or its business into the state of Wisconsin if the insurance company cannot.

A corporation not being a citizen within the meaning either of the constitution as originally adopted or of the fourteenth amendment, it follows that a state may prohibit foreign corporations from doing business within its borders or it may grant such privilege on such condition as it deems best.

12 C. J. 1121;

12 R. C. L. 6-10;

*Selover v. Walsh*, 226 U. S. 112;

*Berea College v. Kentucky*, 211 U.S. 45;

*Ducat v. Chicago*, 10 Wall. 410;

*Independent Tug Line v. Lake Superior Lumber Co.*, 146 Wis. 121;

*Loverin & Browne Co. v. Travis*, 135 Wis. 322;

*Milwaukee Fire Dept. v. Helfenstein*, 16 Wis. 136.

A corporation is not a citizen within the meaning of the fourteenth amendment to the constitution and a state may prohibit it from doing business when organized under the laws of another state or it may prescribe the terms on which such business may be done.

12 C. J. 1143;

*Paul v. Virginia*, 8 Wall. 168;

*Frazier v. Wilcox*, 4 Rob. (La.) 517;

*Northwestern Nat. Ins. Co. v. Riggs*, 203 U.S. 243.

A state may place conditions or restrictions on the doing of certain kinds of business and among others, fire insurance.

12 C. J. 1124;

*Daggs v. Orient Ins. Co.*, 136 Mo. 382.

In the late case of *Fidelity & Deposit Co. v. Tafoya et al.*, 70 L. Ed. 379 (Advance Sheet) this court assumed that it is the established law "that the state has the power and constitutional right arbitrarily to exclude the plaintiff (a foreign corporation) without other reason than that such is its will," except in the instances there specified, none of which apply to this case. In that case the corporation had been regularly admitted to do business in the state. It was like the recent New York *Chrysler* case.

When a foreign corporation has been regularly admitted to

transact business in a state, then it is a person within the meaning of the statutes regulating persons.

12 C. J. 1142;

*Louisville R. Co. v. Gaston*, 216 U. S. 418;

*Head v. N. Y. L. Ins. Co.*, 241 Mo. 403, 147 N.W. 827.

A foreign corporation which has not been regularly admitted to do business in the state, although doing business therein, does not come within the protection of the fourteenth amendment.

12 C. J. 1142;

*Blake v. McClung*, 172 U. S. 239;

*Philadelphia Fire Assn. v. N. Y.*, 119 U. S. 110.

It is not a person "within its jurisdiction." The inherent right of a corporation is by no means the same as the rights of an individual.

*State v. Central Lumber Co.*, 24 S.D. 136, 123 N.W. 504.

The business of insurance is recognized to be one affected with a public interest and is a proper subject for the exercise of the police powers of the state.

14 R. C. L. 857;

*McCarthy v. Firemen's Ins. Co.*, 74 N. J. Eq. 372;

*German Alliance Ins. Co. v. Kansas*, 233 U. S. 389.

Owing to the power of a state absolutely to exclude foreign corporations from its boundaries, it may prescribe such conditions of admission not in conflict with the federal constitution as it desires.

14 R. C. L. 861;

12 R. C. L. 10;

*Doyle v. Continental Ins. Co.*, 94 U. S. 535.



Insurance business and issuing insurance contracts is not commerce, and for that reason there is no interference with interstate commerce by a statute requiring every insurance company transacting business in the state to be taxed annually on the excess of premiums received over losses and ordinary expenses incurred during the year.

14 R. C. L. 858;

*N. Y. Life Ins. Co. v. Deer Lodge Co.*, 231 U. S. 495.

The doctrine of comity permits but does not require, so that the legislature of a state may permit or license a foreign corporation to do business in the state or it may prohibit it. Accordingly, a corporation may go into another state if not prohibited by the latter's constitution or statute, and make any contract or acquire any property which is within the powers conferred by its charter and it may maintain actions to enforce its rights.

8 Fletcher Cyc. Corp., sec. 5736.

The recognition of a corporation's existence by other states and the enforcement of its contracts made therein, depends purely upon the comity of those states—a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy.

8 Fletcher Cyc. Corp., sec. 5736, p. 9381.

Having no absolute right of recognition in other states, but depending for such recognition and enforcement of its contract upon their assent, it follows as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely, or they may restrict its business to

particular locations or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in the judgment of such state.

8 Fletcher Cyc. Corp., sec. 5736, p. 9381;  
*Paul v. Virginia*, 8 Wall. 168.

Where a corporation does business in such state, it will be presumed to have assented to the terms so imposed.

8 Fletcher Cyc. Corp., sec. 5736, p. 9381;  
*St. Clair v. Cox*, 106 U. S. 350.

Chief Justice Waite said:

"A corporation 'must dwell in the place of its creation, and cannot migrate to another sovereignty,' \* \* \* though it may do business in all places where its charter allows *and the local laws do not forbid.* \* \* \*." (Italics ours.)

8 Fletcher Cyc. Corp., sec. 5737, p. 9384;  
*Waters Pierce Oil Co. v. Texas*, 177 U. S. 28.

Comity does not supply corporate powers nor confer corporate capacity. It merely enables a body of corporators chartered by one state to act in a corporate capacity in another state, *subject to all the laws and regulations of the latter state.*

8 Fletcher Cyc. Corp., sec. 5737, p. 9385;  
*Martin v. Watson Nav. Co.*, 239 Fed. 188;  
*Seattle Gas & Electric Co. v. Citizens L. & P. Co.*, 123  
Fed. 588;  
*Relfe v. Rundle*, 103 U. S. 222.

No state need allow a corporation created by another state or country to do business within its jurisdiction unless it chooses to do so.

8 Fletcher Cyc. Corp., sec. 5737, p. 9386;

*Relfe v. Rundle*, 103 U. S. 222;  
*Backover v. Life Assn. of America*, 77 Va. 85;  
*St. Louis and S. F. R. R. Co. v. Cross*, 171 Fed. 480.

The laws of comity between nations or between states of the Union do not require a country or state to allow a foreign corporation to do business or hold property within its limits or require the courts of such country or state to enforce its contracts made within the state or otherwise to recognize it, when to do so would violate an express provision of the constitution or laws of the state.

8 Fletcher Cyc. Corp., sec. 5738, p. 9387;  
*Blake v. McClung*, 172 U. S. 239;  
*Canada Southern R. R. Co. v. Gebhard*, 109 U. S. 529;  
*Paul v. Virginia*, 8 Wall. 168;  
*Runyan v. Coster*, 14 Pet. 122;  
*Bank of Augusta v. Earle*, 13 Pet. 519;  
*Baldwin Tool Works v. Blue*, 240 Fed. 202; also a long list of other cases cited in the note.

Every power which a corporation exercises within a state other than that by which it was created, depends for its validity upon the law of the state in which it is exercised and a corporation can make no valid contract without the sanction, express or implied, of such state.

*Runyan v. Coster*, 14 Pet. 122.

Having no absolute right of recognition in another state, but depending for such recognition and the enforcement of such contracts upon their assent, it follows as a matter of course that such assent may be granted upon such terms and conditions as those states may think proper to impose.

8 Fletcher Cyc. Corp., sec. 5738, p. 9390;  
*Paul v. Virginia*, 8 Wall. 168.

When a corporation goes into another state to do business, it must do such business there according to the laws of such state.

*Id.* 9390.

Even though there be no statutory provision modifying or withdrawing the extension of the rule of comity to foreign corporations, the law of comity between states does not require a state to allow a foreign corporation to do business or hold property within its limits, or require the courts to enforce its contracts made within the state or otherwise recognize them when to do so would be contrary to its public policy.

8 Fletcher Cyc. Corp., sec. 5740, p. 9399;  
*Waters-Pierce Oil Co. v. State*, 177 U. S. 28;  
*American & Foreign Christian Union v. Yount*, 191 U. S. 352;  
*Cowell v. Colorado Springs Co.*, 100 U.S. 55;  
*Bank of Augusta v. Earle*, 13 Pet. 519;  
*Mannington v. Hocking Valley Ry. Co.*, 183 Fed. 133;  
*Blodgett v. Lanyon Zinc Co.*, 120 Fed. 893;  
*Clark v. Central R. R. & Banking Co., Georgia*, 50 Fed. 338;  
*Knott v. Southern Life Ins. Co.*, 2 Woods 479, Fed. Cas. No. 7894.

Then follows a long list of cases from state courts.

See 8 Fletcher Cyc. Corp., sec. 5740, pp. 9400, 9401, 9402.

It is the legislative and not the judicial power in the state that must control and give shape to its public policy. With this power the courts have not been entrusted.

8 Fletcher Cyc. Corp., sec. 5742, p. 9405 and cases cited.

By the law of comity among nations, a corporation created

by one sovereignty is permitted to make contracts in another. The same law of comity prevails among several states of the union provided such contracts are not prohibited by the laws of such state or contrary to their public policy.

8 Fletcher Cyc. Corp., sec. 5746, p. 9426, and cases cited;  
*American & Foreign Christian Union v. Yount*, 101 U. S.  
 352;  
*Runyan v. Coster*, 14 Pet. 122;  
*Bank of Augusta v. Earle*, 13 Pet. 519.

We do not think this rule is affected by interstate commerce because an insurance policy or contract is not a subject of interstate commerce, but if it were, we do not think it would prevent this police regulation for the benefit of the citizens of the state. Police powers not delegated to the general government reside in the state as an inherent attribute of sovereignty.

8 Fletcher Cyc. Corp., sec. 5765, p. 9543;  
*Hendrick v. Maryland*, 235 U. S. 610;  
*Missouri K. & T. R. Co. v. Harris*, 234 U. S. 412;  
*Central of Georgia R. Co. v. Groesbeck*, 175 Ala. 189;  
*Sligh v. Kirkwood*, 65 Fla. 123;  
*People v. Chicago, I. & L. R. Co.*, 223 Ill. 581;  
*Railroad Comm. of Indiana v. Grand Trunk Western R.  
 Co.*, 179 Ind. 255;  
*Willfong v. Omaha & St. L. R. Co.*, 116 Iowa 548;  
*Kaw Valley Drainage Dist. v. Missouri Pac. R. Co.*, 99  
 Kan. 188;  
*State v. Chicago, M. & St. P. R. Co.*, 136 Wis. 407.

It was not intended by the fourteenth amendment to abridge the police power reserved to the states but only to prevent them from acting arbitrarily and in a manner having no reasonable relation to the end sought to be attained.

8 Fletcher Cyc. Corp. 9543;  
*Broadnax v. Missouri*, 219 U. S. 285;

*House v. Mayes*, 219 U. S. 270;  
*Lochner v. New York*, 198 U. S. 45;  
*Minneapolis & St. L. R. Co. v. Beckwith*, 129 U. S. 26;  
*Sutton v. New Jersey*, 244 U. S. 258;  
*Mugler v. Kansas*, 123 U. S. 623.

And the states may, so long as they do no more than legitimately exercise the police power, legislate upon matters connected with interstate commerce.

8 Fletcher Cyc. Corp., sec. 5765, p. 9546;  
*Missouri, K. & T. R. Co. v. Harris*, 234 U. S. 412;  
*Kansas City Southern R. Co. v. Kaw Valley Drainage Dist.*, 233 U. S. 75;  
*Central of Georgia R. Co. v. Groesbeck*, 175 Ala. 189;  
*Southern Ry. Co. v. Railroad Comm. of Ind.*, 179 Ind. 23;  
*Atlantic Coast Line Ry. Co. v. Comm.*, 102 Va. 599.

### **Insurance not commerce**

The business of insurance as ordinarily conducted is not commerce and a state may absolutely exclude a foreign insurance company from doing business within the state or may permit it to come within the state under such restraints and regulations as the state may choose.

8 Fletcher Cyc. Corp., sec. 5776, p. 9624;  
*Northwestern Mut. Life Ins. Co. v. Wisconsin*, 247 U. S. 132;  
*People v. Fidelity & Casualty Co. of N. Y.*, 153 Ill. 25;  
*State v. Insurance Co. of No. America*, 115 Ind. 257;  
*Scottish Union & National Ins. Co. of Edinburgh, Scotland, etc. v. Herriott*, 109 Iowa 606;  
*State v. Phipps*, 50 Kan. 609;  
*Com. v. Gregory*, 121 Ky. 256;  
*Hartford Fire Ins. Co. v. Raymond*, 70 Mich. 485;  
*Presbyterian Ministers' Fund v. Thomas*, 126 Wis. 281;

*South Carolina v. McMaster*, 237 U. S. 63;  
*Thames & M. M. Ins. Co. v. U. S.*, 237 U. S. 19.

*At the present time, practically every state in the union has passed laws in regard to insurance companies organized under the laws of sister states, so that it may be said that the right of state regulation of the business of insurance is universally recognized and upheld.* The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse and in this respect there is no difference whatever between insurance against fire and insurance against perils of the sea or against the uncertainty of man's mortality. The issuing of a policy of insurance is not a transaction of interstate commerce though the parties may be domiciled in different states. The state having the power to impose conditions on the transaction of business of foreign insurance companies within its limits has the equal right to prohibit the transaction of such business by agents of such companies or by insurance brokers who are to some extent the representatives of both parties.

Taxation of foreign insurance corporations cannot be assailed as an unconstitutional interference with or regulation of interstate commerce.

8 Fletcher Cyc. Corp., sec. 5776, pp. 9624-9629;  
*State v. Phipps*, 50 Kan. 609;  
*N. Y. Life Ins. Co. v. Cravens*, 178 U. S. 389;  
*State v. Ins. Co. of No. America*, 71 Neb. 320;  
*Hooper v. California*, 155 U.S. 648;  
*Philadelphia Fire Assn. v. N. Y.*, 119 U.S. 110;  
*Paul v. Virginia*, 8 Wall. 168, 19 L. ed. 357;  
*Nutting v. Massachusetts*, 183 U. S. 553;  
*Allgeyer v. Louisiana*, 165 U. S. 578;  
*Northwestern Mut. L. Ins. Co. v. Lewis & Clarke Co.*, 28 Mont. 484;

*People v. National Fire Ins. Co. of Hartford*, 27 Hun (N. Y.) 188, etc.;  
*St. Louis and S. F. R. Co. v. Cross*, 171 Fed. 480;  
*Security Mut. Life Ins. Co. v. Prewitt*, 202 U.S. 246.

With the right of a state to regulate or prohibit an insurance company of another state from doing business in the state for the protection of the citizens of such state so generally recognized and established by both state and federal decisions, we confidently assert that the provisions of the Wisconsin Statutes made for the protection of its citizens against irresponsible insurance companies or worthless insurance contracts are reasonable and designed only for the protection of its citizens against fraud and deceit.

A fire insurance company transacting business in a foreign state is bound in respect to such business by the laws of the state where the business is transacted.

10 Fletcher Cyc. Corp. (1921 Sup.), sec. 5730, p. 888;  
*American Fire Ins. Co. v. King Lumber & Mfg. Co.*, 250 U. S. 2, 63 L. Ed. 810.

A corporation is not a citizen within the meaning of the provision of the constitution which secures the privileges and immunities of citizens against state legislation.

*American Fire Ins. Co. v. King Lumber & Mfg. Co.*, 250 U. S. 2, Note at p. 10;  
*Orient Ins. Co. v. Daggs*, 172 U. S. 557.

A state may prescribe the terms upon which alone it will permit foreign corporations to do business within its borders. It may impose any condition it desires. Foreign corporations may be compelled to take out a license as a condition of doing business.

10 Fletcher Cyc. Corp., sec. 5734, p. 888;  
*Kluer v. Middlewest Grain Co.*, 173 N. W. 468;



*Indiana Harbor Belt R. Co. v. Green*, 289 Ill. 81, 124 N. E. 298;

*Dixon v. Northwestern Nat. Life Ins. Co.*, 179 N. W. 885.

A corporation is not entitled to the privileges and immunities of citizens of the several states and of the United States.

10 Fletcher Cyc. Corp., sec. 5754, p. 890;

*Adams v. American Agricultural Chemical Co.*, 82 S. C. 850;

*Bethlehem Motors Co. v. Flint*, 178 S. C. 399, 100 S. E. 693.

*A foreign corporation which cannot sue in a state court because of failure to comply with state requirements, cannot sue to enforce its rights in the federal court.*

*Utah Const. Co. v. St. Louis Const. & Equip. Co.*, 254 Fed. 321.

Certainly these companies could not sue in the state courts to enforce any rights arising out of violation or defiance of the laws of the state.

On the question of what is doing business in the state, it is held that the collection of premiums constitutes doing business in a state and that soliciting insurance and delivering policies in a sister state constitutes doing business in such state.

10 Fletcher Cyc. Corp., sec. 5938, p. 908;

*Hagler v. Security Mut. Life Ins. Co.*, 244 Fed. 863;

*Dixon v. Northwestern Nat. Life Ins. Co.*, 179 N. W. 885.

We think it must be held under sec. 209.05 of the Wisconsin statutes under this method of selling Chrysler cars including insurance policies as a part consideration thereof, that the whole-sale purchaser or agent in Wisconsin is an insurance agent of this insurance company selling insurance in Wisconsin on each auto-

mobile sold, for he not only sells the insurance, but receives the premium or consideration therefor as a part of the purchase price of the cars sold, and notifies the company for the purpose of having the policy issued.

### Wisconsin cases

In the case of *Chicago Title & Trust Co. v. Bashford*, 120 Wis. 281, 284, the court said:

"In order to correctly construe secs. 1770a-1770e, Stats. 1898, as amended by ch. 399 Laws of 1901, placing burdens upon the exercise by foreign corporations of their corporate franchises in this state, we must proceed in the light of two well-established fundamental doctrines or principles: First, that neither by constitutional provision nor otherwise has a foreign corporation the right to exercise such franchises in other than its parent jurisdiction, and that it is not a citizen either of any state or of the United States, within the provision of either sec. 2, art. IV, of the Constitution of the United States, or sec. 1 of the XIVth amendment to that constitution, protecting such citizens against the denial of certain rights by any state. *Paul v. Virginia*, 8 Wall. 168; *Waters-Pierce O. Co. v. Texas*, 177 U. S. 28, 20 Sup. Ct. 518; *Ashland L. Co. v. Detroit S. Co.*, 114 Wis. 66, 78, 89 N. W. 904. Secondly, however, that it is the policy of this state, settled from its earliest existence, to accord to foreign corporations, by comity, full and complete privilege to exercise their corporate franchises within this state except so far as limitation is imposed by express legislation. *Charter Oak L. Ins. Co. v. Sawyer*, 44 Wis. 387; *Wyman v. Kimberly-Clark Co.*, 93 Wis. 554, 559, 67 N. W. 932."

While that rule was stated as the established law of the state, it was held in that case that because the loan and mortgage involved in the case had been given before the enactment of the statute 1770b, that that section would not prevent corporations from holding the mortgage or foreclosing it in case of default.

In the case of *Loverin and Browne Co. v. Travis*, 135 Wis. 322, 328, the Wisconsin court again said with reference to section 1770b:

"\* \* \* It is enacted under the undoubted power of every state to impose conditions in absolute discretion upon granting the privilege of doing business in this state to any foreign corporation. *Paul v. Virginia*, 8 Wall. 168; *Chicago T. & T. Co. v. Bashford*, 120 Wis. 281, 97 N. W. 940. That power is not restrained by sec. 2, art. IV of the federal constitution, providing that the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states, nor by sec. 1, amend. XIV, to that constitution, providing that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, because foreign corporations are not citizens. *Paul v. Virginia*, *supra*; *Chicago T. & T. Co. v. Bashford*, *supra*."

That case, however, involved the sale and transfer of merchandise from a citizen in Illinois to a citizen in Wisconsin, which involved the right of the United States to regulate commerce with foreign nations and among the several states. The court, on pages 330-331, said:

"\* \* \* Parenthetically it may be said, for accuracy, that it has been decided that the traffic or intercourse, in order to constitute commerce or a part thereof, must relate to some merchantable commodity, or at least that it is not sufficient that it relate to a contract of insurance (*Paul v. Virginia*, 8 Wall. 168), or to communications of instruction across state lines (*International T. Co. v. Peterson*, 133 Wis. 302, 113 N. W. 730); a qualification obviously of no importance here, for the subject of whatever transactions were had was groceries, naturally and customarily the subject of barter and sale,"

which clearly comes under the commerce clause of the constitution, but no mercantile commodity is involved in the transaction here. It is a mere question of the right of a foreign cor-

poration to do insurance business in defiance of our laws.

The case of *F. A. Patrick & Co. v. Des Champ*, 145 Wis. 224, was an action by a corporation of Minnesota to foreclose a mortgage given for goods purchased outside the state, and the court held that the transactions were unquestionably acts of interstate commerce, citing *Greck-Am. S. Co. v. Richardson D. Co.*, 124 Wis. 469. The court says sec. 1770*b* has no application to interstate commerce because the exclusive power to regulate such commerce is vested in the congress of the United States. The court there further says that there must be read into the section an exception of such business as constitutes interstate commerce and an exception of such property as is acquired, held or disposed of in this state carrying on interstate commerce. It will be noticed that that question involves property as a subject of interstate commerce which would not involve insurance.

That case was followed in the following cases which are all cases involving interstate commerce of goods.

*Jerome P. Parker-Harris Co. v. Kissel Motor Co.*, 165 Wis. 518;

*Elwell v. Adder Machine Co.*, 136 Wis. 82;

*Duluth Music Co. v. Clancy*, 139 Wis. 189.

So that if this plaintiff or the Palmetto Fire Insurance Company was selling merchandise as an article of commerce, their rights might be protected under the commerce clause of the constitution, but this case involves the simple question of the right of plaintiff or its insurance company to do an insurance business and to write insurance in Wisconsin on property in Wisconsin belonging to a Wisconsin citizen in defiance of the Wisconsin laws which were made for the protection of the citizens of the state and which were passed under the police powers of the state and in no way involve interstate commerce within the meaning of the constitution.

If it had involved property rights incidentally, it would not affect the state's right to so control it, for a reasonable police regulation is not invalid because property rights are to some extent affected by it.

*Benz v. Kremer*, 142 Wis. 1.

It is for the legislature to determine in what cases and upon what conditions the police power may be exercised and its determination will be deemed correct by the court unless it appears to be clearly wrong, and the court will also consider the ostensible purpose of the police regulation as its actual purpose unless the contrary clearly appears.

*Benz v. Kremer*, 142 Wis. 1;

*State ex rel. Kellogg v. Currens*, 111 Wis. 431, 438;

*St. Louis & S. F. R. R. Co. v. Cross*, 171 Fed. 480;

*Hooper v. California*, 155 U. S. 648.

The insurance laws of Wisconsin are similar to the insurance laws of many of the other states and more comprehensive than some. They were enacted under the police powers of the state for the purpose of protecting its citizens against fraud and deceit by irresponsible and uncontrolled insurance companies, based on the experience of years when such companies and such business was not regulated or controlled by law and because of that fact the security afforded was of but little, if any, value to the insured.

In the case of *Seamans v. The Knapp Stout & Company*, 89 Wis. 171, both the insurance company and the insured were corporations of Wisconsin and existed only by force of the laws of this state. The court said, at page 178:

"\* \* \* Since such laws, of themselves, have no extra-territorial force, these corporations cannot migrate to other states, but must dwell in the state of their creation. \* \* \* While these corporations can only live and have their being in this state, yet

their residence here creates no insuperable objection to their power to contract and be contracted with in other states, *provided they do so in accordance with the laws of such other states.* \* \* \* One of the policies issued by the insurance company covered certain personal property of the defendant located in Iowa, and the other covered certain personal property of the defendant located in Missouri. *The authority of each of those states to prescribe the conditions upon which each of said corporations would be allowed to make contracts and do business therein must be conceded.* (Italics ours.) *State v. U. S. Mut. Acc. Asso.*, 67 Wis. 629; *Stanhilber v. Mut. M. Ins. Co.*, 76 Wis. 291; *State ex rel. Covenant M. B. Asso. v. Root*, 83 Wis. 680. \* \* \*."

In the case of *Seamans v. Zimmerman*, 91 Iowa 366, the Iowa court says that sec. 1144 of the Iowa statutes is directed not merely to the agents as such, but to the companies themselves. They are forbidden to take any risks in this state, either directly or indirectly. The general assembly intended the prohibition to reach as far as its jurisdiction extends. *The power of the legislature of a state to make contracts like those under consideration void, is not questioned.* It was recognized in *Columbia Fire Ins. Co. v. Kinyon*, 37 N. J. L. 33. Comity does not require the enforcement of a contract valid where made, but in violation of the laws of the state where it is sought to be enforced. The provision of the statute under consideration was designed to protect the property owners of this state from irresponsible insurance companies and the contract in question belonged to the class which the general assembly intended to prohibit. To hold that the company may recover the assessments would be to give it all the benefits which it ever expected to derive from the contract and would be an evident violation of the spirit and the intent of the statute. The contracts are contrary to the policy of this state as expressed in the statute and the courts of this state will not aid the company to enforce them.

*Mutual Health Assurance Co. v. Rosenthal*, 55 Ill. 886;  
*American Ins. Co. v. Stay*, 41 Mich. 401;  
*Aetna Ins. Co. v. Harvey*, 11 Wis. 394;  
*Swing v. Munson*, 191 Pa. 582.

A contract of insurance on property in Pennsylvania with a foreign insurance company irrespective of where made, is an attempt to do business in Pennsylvania so as to be forbidden by the statutes unless certain conditions are complied with.

*Swing v. Munson*, 191 Pa. 582.

A contract with a foreign insurance company made in another state in which it is valid, but in direct violation of the laws of the state in which the property is situated and in which the insured resides, will not be enforced in the latter state.

*Swing v. Munson*, 191 Pa. 582, 58 L. R. A. 223;  
*Seamans v. Temple Co.*, 28 L. R. A. 430;  
*Polk v. Hanke*, 28 L. R. A. 568;  
*Gooch v. Faucett*, 39 L. R. A. 835;  
*Thompson v. Taylor*, 54 L. R. A. 585.

An insurance policy is governed by the law of the state in which it is actually delivered to the insured.

*Cravens v. N. Y. Life Ins. Co.*, 148 Me. 583, 53 L. R. A. 305.

This certificate policy was delivered in Wisconsin by the postal department acting as agent of the insurance company which was required to deliver the policy when notified by the Chrysler Sales Corporation of the sale of the automobile.

An insurance company can do business in a state other than that in which it is domiciled only by permission of such state and under such conditions as such state may impose.

*Travelers Ins. Co. v. Fricke*, 41 L. R. A. 557, 99 Wis. 367.

A state can impose upon foreign insurance companies seeking to transact insurance business therein, such terms and conditions as it may deem proper or wholly exclude them.

*Daggs v. Orient Ins. Co.*, 35 L. R. A. 227, 136 Mo. 382,  
38 S. W. 85.

That decision was affirmed in 172 U. S. 557.

A state legislature has power to prescribe the conditions upon which insurance companies of other states can do business within their state.

*State v. Phillip*, 18 L. R. A. 57, 50 Kans. 609;  
*Parker v. C. Bloenson*, 34 L. R. A. 704.

This plaintiff cannot say that the laws of Wisconsin are designed to collect revenues from licensing insurance companies. The amount of the license fee is not the important thing, for it is not large enough to furnish an excuse for any company's refusal to obtain a license. It does not pay the expense of supervision. The reason for the license is the necessity for regulating the business. That was the purpose of the legislature in enacting these laws and this scheme and method of doing business shows very forcibly the necessity for such statutory supervision for none of these purchasers of cars and insurance contracts in Wisconsin know what their insurance contracts are or what they are worth, for they never saw them if the master policy is a part of the contract, for that is in Michigan and the company has never been examined by the insurance commissioner and they say he must not examine them. It says to Wisconsin, we will issue and deliver to your citizens as many insurance policy contracts as we can sell automobiles to your citizens and you keep your hands off.

While a state cannot prevent one of its citizens from going



into another state and buying a contract of insurance in that state, it can forbid the making or delivering, within its borders, of insurance contracts by foreign companies or their agents without its supervision.

*State v. J. P. Bass Pub. Co.*, 20 L. R. A. (N. S.) 495,  
71 A. 894.

In the case of *Seamans v. Knapp-Stout & Co.*, 89 Wis. 171, the Wisconsin court says that the residence of the companies in Wisconsin creates no insuperable objection to their power to contract and be contracted with in other states, *provided they do so in accordance with the laws of such other states.*

That is all we are asking here. This plaintiff and its insurance company are both nonresidents of Wisconsin and they are asking the aid of a court of equity to force their Chrysler-Palmetto method of insurance into the state of Wisconsin without any license and without any supervision by its officers, in defiance of the laws of the state which were made for the protection of its citizens. We submit it should not be aided in so doing by a court of equity.

If this insurance company is a responsible company and will do a legitimate insurance business, it can obtain a license therefor under the laws of Wisconsin the same as any other insurance company by submitting itself to the jurisdiction, examination and supervision of the proper officers of the state.

Plaintiff claims that the supervisory provisions of our insurance statutes are unconstitutional. We reply that this is a police power and no corporation, and especially no foreign insurance corporation has any constitutional right to come into our state and swindle or defraud the citizens of our state, and for that reason we confidently assert that any reasonable regulation and supervision by the state to prevent such a result is proper regulation. Cheap insurance may be no insurance at all, or dear at

any price, so a state may require a reasonable rate to be charged and a reasonable protection to be furnished and a suitable remedy for its enforcement in the state.

Selling insurance is not like selling ordinary goods or property, for that is bought for the value in the articles or property sold, while insurance is only valuable because of the form and conditions of the contract and the responsibility of the company issuing it.

The man who buys one of these insurance contracts in Wisconsin as a part of his automobile purchase does not know when he receives this certificate insurance policy what his full contract is if the provisions of the so-called master policy are a part of his insurance contract, as they now claim, for that so-called master policy is in Detroit, Michigan, and he does not know whether this company is solvent or insolvent, because it has not been examined, and appellant says because this insurance company was created by South Carolina, the insurance commissioner of Wisconsin has no right to help him find out whether his insurance is good or bad.

Before Wisconsin had any statutes prescribing the manner of doing insurance business and providing for supervision by the insurance commissioner of such business and companies, there were all sorts of so-called wild-cat insurance schemes in Wisconsin and, of course, the more irresponsible the insurer, the more attractive insurance contract it could make, and our statutory provisions regulating the business were born out of that experience, as stated by Justice Winslow in *Rose v. Kimberly-Clark Co.*, 89 Wis. 545, and they were designed to furnish to the insured citizens needed protection from such irresponsible companies and from valueless insurance contracts.

Clearly, the purchaser of an insurance policy contract has no way of investigating for himself as to the responsibility of the company, or the relative value of insurance contracts, so the

state imposed upon the insurance commission the duty to make the necessary investigation as to the responsibility of insurance companies before they are permitted to do business in the state and to require that such business be done in the manner prescribed by the statutes.

Counsel claim these regulatory provisions are unnecessary, unreasonable and unconstitutional, but clearly they are police regulations for the protection of the insured citizens of the state and were considered by the legislature as reasonably necessary to prevent fraud, and to protect the citizens of the state as they cannot make the necessary investigations for themselves. We submit that under the decisions this foreign insurance company has no constitutional right to do such business in this state, for it is doing a special kind of confidence business and all the right it has it gets from the state of South Carolina, which created it, and whatever rights it has or gets in Wisconsin, it must get from Wisconsin and for that reason, Wisconsin can make such terms as from the experience of years in dealing with such companies and business, it has found to be necessary for the proper protection of its citizens against irresponsible insurance companies and cheap or worthless schemes and contracts, and the courts should not in the exercise of their equity jurisdiction furnish any protection to this plaintiff in carrying on this illegal conspiracy to defeat the laws of Wisconsin or help it to force its lawless schemes and method of doing business in Wisconsin.

This insurance company has the same right as any other insurance company to come into the state and ask for a license if it wants to do this insurance business in the state and if it can qualify to do such business under the laws of the state it can get a license to do business in the same way any other company does, and we submit, if it cannot so qualify or is unwilling to do business as required by law, then it should not have the assistance of a court of equity to force its pretended insurance upon our citizens.

We have now received appellant's brief and we think no new questions have been raised.

The opinion of the circuit court of Dane county, Wisconsin, in the cases of *Bristol & Co. v. Railroad Commission of Wisconsin*, decided July 19, 1926, is cited as sustaining the right to carry on this insurance business in Wisconsin without a license, but those cases involved the right of Bristol & Co., a resident of Illinois, to sell mortgage bond securities in Wisconsin that had endorsed thereon a guarantee of payment by an insurance company of that state and licensed there, but not in Wisconsin and the Insurance Commissioner of Wisconsin objected to the railroad commission's authorizing such sale without the approval of the Insurance Commissioner under the provisions of sec. 189.10 (2) of the Wisconsin statutes, which provides that:

"No permit shall be issued for the sale of securities of an insurance company or of a company whose business consists chiefly in owning or controlling the securities of insurance companies, without the approval of the insurance commissioner. \* \* \*"

That, we submit, is not the question here for those were securities of:

1. Bonds and securities of the Hostelry Corporation of Kankakee,
2. Bonds and securities of the M. & H. Theatres Corporation,
3. Bonds and securities of the Wilson Building Corporation,
4. Bonds and securities of the Marquette Court Building Corporation.

Those cases are all appealed to the state supreme court, but they are not under this statute, for they all involve the provisions of sec. 189.10 (2) of ch. 189, which is the securities chapter, while this case involves the regulatory provisions of ch. 201, relating to insurance.

On pages 62 and 63 of appellant's brief it is argued:

"The attempt of the States of Wisconsin and Maine through their commissioners of insurance to prevent the retail sale of Chrysler cars by dealers in those states and because those dealers purchased the cars at wholesale in interstate commerce from Chrysler who had made a contract of insurance in respect to them is in effect an attempt by the state to place a burden on inter-state commerce under the guise of regulating intra-state business."

Clearly we are not preventing Chrysler from selling automobiles either inter- or intra-state, but we are attempting to prevent the sale of unauthorized insurance in Wisconsin to our citizens without any supervision by the state. Suppose Chrysler as an aid or inducement to the sale of Chrysler cars in Wisconsin advertised that instead of furnishing insurance policies with each car the radiator of each Chrysler car sold in Wisconsin was filled with whiskey, or that to each purchaser of a Chrysler car in Wisconsin they would deliver by mail a gallon of whiskey instead of this insurance policy, would it be claimed that the state could not legislate for the protection of its citizens against such a scheme to evade the laws of the state? Laws should not be construed so as to promote lawlessness.

There are numerous statements made and questions discussed in appellant's brief that might be explained, denied, or distinguished from the facts in this case, but we believe the general principles are all sufficiently covered by the general discussion and the authorities already cited in this brief, and in the opinion of the court.

We submit the decision of the lower court was right and should be affirmed.

Respectfully submitted,

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# SUPREME COURT OF THE UNITED STATES.

Nos. 255, 273, 274, 286 and 287.—OCTOBER TERM, 1926.

Palmetto Fire Insurance Company, Appellant, 255 vs. Harry L. Conn, Superintendent of Insurance of the State of Ohio.	}	Appeal from the District Court of the United States for the Southern District of Ohio.
Chrysler Sales Corporation, Appellant, 273 vs. Wilbur D. Spencer, Insurance Commissioner of the State of Maine.	}	Appeals from the District Court of the United States for the District of Maine.
Utterback-Gleason Company, Appellant, 274 vs. Wilbur D. Spencer, Insurance Commissioner of the State of Maine.	}	Appeals from the District Court of the United States for the Western District of Wisconsin.
Clark Motor Company, Appellant, 286 vs. Olaf Johnson, Commissioner of Insurance of the State of Wisconsin.	}	
Chrysler Sales Corporation, Appellant, 287 vs. Olaf Johnson, Commissioner of Insurance of the State of Wisconsin.	}	

[October 25, 1926.]

Mr. Justice HOLMES delivered the opinion of the Court.

These cases all raise the same question. The first, *Palmetto Fire Insurance Company v. Conn*, is a suit to enjoin the Ohio Superintendent of Insurance from revoking the license of the plaintiff, a corporation of South Carolina, to do business in Ohio, on the ground that it has violated statutes of the latter State. These

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statutes forbid the insurance of property in the State except by a legally authorized agent, resident in Ohio, and tax the business lawfully done there. They provide also that any one who procures an application for insurance shall be held to be the agent of the party thereafter issuing the policy. The plaintiff says that if the statutes are held to apply to what it has done they are invalid under the Fourteenth Amendment of the Constitution of the United States. The case was tried before a statutory court of three judges and an injunction was refused. 9 Fed. (2d) 202.

The facts are simple. The plaintiff made a contract of insurance in Michigan with the Chrysler Sales Corporation, a Michigan corporation which sells all the automobiles made by the Chrysler Corporation. This contract purported to insure purchasers of Chrysler cars against fire and theft, and to become automatically effective from the date on which the purchaser took delivery or a bill of sale of the car; the Chrysler Company to send a monthly report to the plaintiff of all cars for which insurance was thus provided and to pay premiums accordingly at Detroit. If anyone bought a car he got the insurance whether he wished it or not as part of his bargain, and a certificate was sent to him by the plaintiff. The question is whether this transaction brought the plaintiff within the taxing power of Ohio. If it did not, the power of the State to exclude the Company altogether could not be used as a means to accomplish a result beyond the State's constitutional power. *Fidelity & Deposit Co. of Maryland v. Tafoya*, March 15, 1926.

Manifestly there was nothing in the contract between the plaintiff and the Chrysler Sales Corporation, without more, that Ohio could lay hold of, even if it insured property in Ohio. But the contract contemplated and provided for a benefit to third persons if, when, and where they complied with its conditions. When a man bought a car in Ohio, by that act he made effective the agreement of the Company to insure future purchasers, and imposed upon it an obligation that did not exist before. It is true that the obligation arose from a contract made under the law of another State, but the act was done in Ohio and the capacity to do it came from the law of Ohio, so that the cooperation of that law was necessary to the obligation imposed. It would be held in some jurisdictions that the purchaser became party to a contract with the insurance company. By universal consent he at least would become the beneficiary of a contract for his benefit. Whatever technical form may



be given to the reasoning, the substance is that by acts done in Ohio the purchaser obtains for himself the advantage of insurance that before that moment did not exist. It does not matter whether his getting it was a large or an inconspicuous feature of his bargain. It was part of it in any event, and we cannot doubt that the lower Court was right in holding that in such circumstances the State could insist upon its right to tax. It would be extravagant to say that the State's general power to deny to the plaintiff the right to enter or remain within it for business unless it paid for these transactions as a part of the price, must be denied upon constitutional grounds.

The two suits in Wisconsin, *Clark Motor Company v. Smith, Commissioner of Insurance*, and *Chrysler Sales Corporation v. Smith*, were begun about the same time as the Ohio case. The Clark Motor Company described itself as a distributor, buying cars from the Chrysler Sales Company and selling them to retail dealers, known as dealers. Neither distributor nor dealer acts as agent for the Chrysler Sales Company, but each buys and sells on its own behalf. The position of the Chrysler Sales Company, the other plaintiff has been described. The Commissioner of Insurance treats the sales as contravening statutes of Wisconsin similar to those of Ohio. A Court of three judges refused an injunction against his enforcing the Acts. 9 Fed. (2d) 666. We are of opinion that the decision was correct. It is argued that the statutes were misconstrued by the Court. An appeal to this Court is allowed when an injunction is granted or refused on the ground of the alleged unconstitutionality of a State law. If we assume that other questions are open, still it is not desirable that the Courts of the United States should go beyond necessity to instruct the officials of a State as to the meaning of a State law. Unless the case is very clear their action should be left to the control of the State Courts. There are plausible reasons in this case for following the local interpretation and we think that the Court below was right in accepting the Commissioner's view. Other arguments thrown in as makeweights do not need to be discussed. The fact that the cost of the insurance was taken up into the price of a machine otherwise lawfully sold does not prevent the insurance being reached. See *Herbert v. The Shanley Co.*, 242 U. S. 591. The question raised by these bills is the general one, whether the State laws can be applied to this insurance. That we have answered. Exactly how far the laws can go and

what proceedings can or cannot be taken, may be left to be determined, if the questions arise, in the State Courts.

The cases from Maine, *Chrysler Sales Corporation v. Spencer, Insurance Commissioner* and *Utterback-Gleason Company v. Spencer*, are like the last, and follow the Wisconsin decision after a full discussion. 9 Fed. (2d) 674. These decisions also must stand.

*Decrees affirmed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*